APPENDIX

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APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-13128
Non-Argument Calendar

D.C. Docket No. 1:17-cr-20178-KMW-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HUBERT YOUTE,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(April 16, 2019)

Before MARCUS, ROSENBAUM, and BRANCH, Circuit Judges.

PER CURIAM:

Hubert Youte appeals his conviction for making a false statement to a U.S. customs official. He raises arguments about the reasonableness of the search of his

shipboard quarters, the adequacy of his *Miranda* warnings, and the sufficiency of the evidence to convict him. Because we conclude that these arguments fail, we affirm.

Youte, a national of Haiti whose first language is Haitian Creole, was an able seaman on board a freighter docked in Miami. When U.S. customs officials arrived to conduct a routine outbound inspection of the freighter, customs agent Angel Rodriguez remembered Youte from previous inspections and thought his demeanor seemed odd this time. According to Rodriguez's later testimony, Youte looked upset that customs officials were on board. Rodriguez questioned Youte in Youte's cabin in English and had no difficulty conversing. After Youte told Rodriguez that everything in the cabin was his, Rodriguez asked him if he was carrying more than $10,000. Youte said no. When asked how much money he did have, Youte produced about $2,000 from a pillowcase. Asked if he had any more money, Youte produced $42 from his shirt pocket. Asked again, he produced $200 from a pair of jeans lying nearby. Rodriguez then asked three more times if Youte had disclosed all of the money he had, and Youte said yes. Rodriguez and his partner searched Youte's cabin and discovered a Tide detergent box, taped shut with a lot of clear tape. They cut the box open and found it contained $36,930 in cash. Youte immediately began to repeat, "Talk to Jeff," and the officers escorted him off the ship.

In the customs office, Youte was interviewed by three agents including Jacque Philippe, who is a native speaker of Haitian Creole but is not trained as a translator. Youte told Philippe that he did not know how to write, that he did not know how to speak English, and that he only spoke Creole. Philippe then read Youte his *Miranda* rights in Creole by extemporaneously translating the English waiver form, since the Creole form was unavailable. Philippe paused several times to ask Youte whether he understood; Youte said he did and marked the waiver form. Youte then agreed to speak with the agents. He told them that he knew that the Tide box contained money and that he was bringing it to Haiti at the request of a former coworker named Jeff, who was flying to Haiti and planned to receive the box from Youte there.

Youte was charged with bulk cash smuggling, 31 U.S.C. § 5332(a), and making a false statement, 18 U.S.C. § 1001(a)(2). Before trial, Youte unsuccessfully moved to suppress the cash and his post-*Miranda* statements. After the government presented its evidence at trial, the district court granted Youte's motion for a judgment of acquittal on the cash smuggling charge, finding that the government had not proved Youte's knowledge of the currency reporting requirement, an essential element of the crime.[1] The jury convicted Youte on the

[1] *See* 31 U.S.C. § 5332(a)(1) (requiring "intent to evade a currency reporting requirement under section 5316"). A report is required when a person knowingly transports "monetary instruments

false statement charge. He was sentenced to time served, and he lost his work visa as a result of the conviction. This is Youte's appeal.

Youte first argues that the currency evidence should have been suppressed as the fruit of an unreasonable search. He asserts that the customs officials lacked reasonable suspicion to enter and search his living quarters on board the vessel. We review the denial of a motion to suppress evidence under a mixed standard of review: the district court's findings of fact are reviewed for clear error, while its application of the law is reviewed *de novo*. *United States v. Pierre*, 825 F.3d 1183, 1191 (11th Cir. 2016).

As Youte acknowledges, his position is foreclosed by our precedent in *United States v. Alfaro-Moncada*, 607 F.3d 720 (11th Cir. 2010). In that case we held that, under the border search exception,[2] searches of a crew member's onboard cabin at the U.S. border do not require reasonable suspicion. *Id.* at 728–32. Under our prior panel precedent rule, we are bound by our published decisions that have not been overruled by the Supreme Court or our *en banc* Court. *United*

of more than $10,000 at one time . . . from a place in the United States to or through a place outside the United States." 31 U.S.C. § 5316(a)(1)(A).

[2] "[T]he Fourth Amendment's balance of reasonableness is qualitatively different at the international border . . . . Routine searches of the persons and effects of entrants are not subject to any requirement of reasonable suspicion, probable cause, or warrant." *United States v. Montoya de Hernandez*, 473 U.S. 531, 538 (1985).

States v. Romo-Villalobos, 674 F.3d 1246, 1251 (11th Cir. 2012). Accordingly, the district court did not err in denying Youte's motion to suppress on these grounds.

Second, Youte argues that his post-*Miranda* statements should have been suppressed because the poorly translated *Miranda* warnings he received were inadequate. Again, we review findings of fact for clear error and conclusions of law *de novo. United States v. Barbour*, 70 F.3d 580, 584 (11th Cir. 1995). We assess the "'totality of the circumstances,' construing the facts in the light most favorable to the party prevailing below." *Id.* (quoting *Fare v. Michael C.*, 442 U.S. 707, 725 (1979)).

We conclude that the warnings Youte received were adequate under *Miranda*, which announced that, before questioning, an individual must be warned "that he has the right to remain silent," "that anything said can and will be used against the individual in court," "that he has the right to consult with a lawyer and to have the lawyer with him during interrogation," and "that if he is indigent a lawyer will be appointed to represent him." *Miranda v. Arizona*, 384 U.S. 436, 467–68, 469, 471, 473 (1966). The Supreme Court has clarified that *Miranda* requires not a "talismanic incantation" but rather that the warnings "reasonably 'conve[y] to [a suspect] his rights as required by *Miranda*.'" *Duckworth v. Eagan*, 492 U.S. 195, 203 (1989) (quoting *California v. Prysock*, 453 U.S. 355, 359, 361

(1981)) (alterations in original). The warnings given to Youte in Creole met this standard.

Youte argues that he was not adequately warned that his statements could be used against him in court because Philippe translated that part of the warning incompletely. According to the interview transcript and its translation, Philippe said, "*Nan pot bagay ou di nou . . . Nou ka* used *li nan kot, nan tribinal la*," to convey, "Anything you tell us . . . We can use it in court." He did not translate *used* into Creole and he did not specifically say that Youte's statements could be used *against him* in court. We find, however, that neither shortcoming of the translation was fatal to conveying the relevant information, since Youte repeatedly told his interviewers that he understood and never appeared confused or asked for clarification.[3] *Miranda* itself instructs that this part of the warning "is needed in order to make him aware not only of the privilege [against self-incrimination], but also of the consequences of forgoing it." 384 U.S. at 469. Agent Philippe's statement adequately conveyed those consequences.

Youte also argues that he was not adequately warned that he was unconditionally entitled to have a lawyer with him during interrogation. Agent Philippe stated in Creole, "You have the right to contact an attorney before you

[3] His understanding may reasonably be explained by the district court's factual finding, not clearly erroneous, that Youte understood some spoken English, as evidenced by Youte's interactions and conversation in English with Rodriguez on board the ship.

make any statements.[4]. . . You have the right to have an attorney present with you while being questioned. . . . If you cannot pay an attorney yourself . . . they will appoint you one before if you need one. [Umm] If you want." We find that any ambiguities or misstatements in Philippe's translation were immediately corrected. If translating "consult" as "contact" was misleading, the "right to have an attorney present with you while being questioned" clarified the statement. And although "if you need" an attorney was improper, it was immediately corrected to "if you want."

Thus, despite the inelegant translation by Agent Philippe, neither of these two requisite components of a *Miranda* warning was lacking. *Cf. United States v. Street*, 472 F.3d 1298, 1311–12 (11th Cir. 2006) (warnings were inadequate where neither how statements might be used nor whether counsel would be appointed were mentioned at all). A suspect's difficulties with English do not preclude the possibility of receiving adequate *Miranda* warnings, especially when he unequivocally states that he understands the rights of which he has been informed. *United States v. Boon San Chong*, 829 F.2d 1572, 1573–74 (11th Cir. 1987) (defendant was able to read rights waiver form in native language and indicated that he understood). Given that the Supreme Court "has not dictated the words in

[4] Youte argues that Philippe here corrected himself and said, "After you give us any statements." It is not clear from the transcript, however, that this alteration was meant as a correction. In any case, Philippe's next statement, "You have the right to have an attorney present while being questioned," correctly stated Youte's right to consult with an attorney and have him present with him during interrogation as required by *Miranda*.

which the essential information [of the *Miranda* warnings] must be conveyed," *Florida v. Powell*, 559 U.S. 50, 60 (2010), the district court did not err when it concluded that Youte received that essential information.

Finally, Youte argues that the evidence was legally insufficient for the jury to convict him of making a false statement under 18 U.S.C. § 1001(a)(2). We review the denial of a motion for judgment of acquittal on sufficiency of the evidence grounds *de novo*, viewing the evidence in the light most favorable to the government, and drawing all reasonable inferences in favor of the government. *United States v. Capers*, 708 F.3d 1286, 1296 (11th Cir. 2013). "The evidence need not be inconsistent with every reasonable hypothesis except guilt, and the jury is free to choose between or among the reasonable conclusions to be drawn from the evidence presented at trial." *Id.* at 1297. We will not overturn a jury's verdict if any reasonable construction of the evidence would have allowed the jury to find the defendant's guilt beyond a reasonable doubt. *Id.*

The false statement at issue is Youte's statement to the customs officials in his cabin that he was not transporting more than $10,000. Section 1001 of Title 18 makes it unlawful to "knowingly and willfully . . . make[] any materially false, fictitious, or fraudulent statement or representation" in any matter within the jurisdiction of the federal government. 18 U.S.C. § 1001(a)(2). In order to obtain a conviction under § 1001, the government must establish "(1) that a statement was

made; (2) that it was false; (3) that it was material; (4) that it was made with specific intent; and (5) that it was within the jurisdiction of an agency of the United States." *United States v. Clay*, 832 F.3d 1259, 1305 (11th Cir. 2016) (quoting *United States v. House*, 684 F.3d 1173, 1203 (11th Cir. 2012)). The fourth element—the only one Youte disputes—can be satisfied by circumstantial evidence from which a reasonable jury can infer that the defendant acted knowingly and willfully. *Id.* at 1309.

We find that the jury could have reasonably inferred from the totality of the evidence that Youte knowingly and willfully lied about transporting more than $10,000.[5] First, Rodriguez specifically asked him if he had more than $10,000, and he said no. Then, Youte failed to mention the Tide box as he was piecemeal disclosing the money in his cabin—but in his later interview, he admitted that he knew the box contained money. A reasonable jury could infer from this evasive and inconsistent behavior that Youte must have known the box contained more than $10,000 or else he would have been candid about its existence. The district court did not err in denying Youte's motion for a judgment of acquittal.

AFFIRMED.

[5] Although the district court entered a judgment of acquittal on the bulk cash smuggling count, for which specific knowledge of the currency reporting requirement was an element the government failed to prove, no knowledge of any such requirement is needed in order to lie about transporting $10,000.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 17-20178-CR-WILLIAMS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HUBERT YOUTE,

Defendant.
_____/

Defendant's Motion to Suppress & Request for Evidentiary Hearing

The Defendant, Hubert Youte, through undersigned counsel, moves this Court pursuant to the Fourth and Fifth Amendments to the U.S. Constitution, and Miranda and its progeny, for an order suppressing all physical evidence and statements made by Mr. Youte. We respectfully request an evidentiary hearing.

Facts

On February 27, 2017, the M/V Doris T, a 259' coastal freightliner was berthed at 3630 NW North River Drive, Miami, Florida, along the Miami River.

While berthed, U.S. law enforcement officers boarded the vessel and encountered the vessel's crew, which included the Defendant Hubert Youte. While on board the vessel and after encountering the crew, the law enforcement officers arrested the crew and took the crew into custody. The law enforcement officers did not permit the crew (including Mr. Youte), to leave the vessel, and the officers, by their words and actions, made it clear that Mr. Youte was not free to leave.

Mr. Youte had a cabin on board the vessel, which served as his personal living quarters while on the vessel. After Mr. Youte was in custody, and without his consent, law enforcement officers conducted a search of Mr. Youte's cabin. The search led to the discovery of approximately $2,000 in U.S. currency throughout the cabin. It also led to the discovery of a small Tide detergent box inside the cabin. After discovering the box, law enforcement proceeded to cut the box open, which led to the discovery of approximately $37,000 in bundled U.S. currency inside of the box.

The search of Mr. Youte's cabin was conducted without any suspicion or cause that Mr. Youte was engaged in any criminal activity or other violation of the law. It was a suspicion-less search of the cabin. The search was also not preceded by any search warrant.

Moreover, also after Mr. Youte was in custody, and in the moments before, during and after the search of his cabin, law enforcement interrogated Mr. Youte while on the vessel. Mr. Youte made incriminating statements in response to law enforcement's interrogation. This interrogation on board the vessel was not preceded by any Miranda warnings or a valid waiver of Miranda rights by Mr. Youte.

After the search of Mr. Youte's cabin, and while he was still in custody, law enforcement escorted Mr. Youte off the vessel and transported him to their office. While at the office, two law enforcement officers proceeded to interrogate Mr. Youte for approximately 49 minutes. This interrogation was audio and video recorded. At

the start of the interrogation, the officers presented Mr. Youte with an English-language Statement of Rights form and English-language Consent to Search form. Mr. Youte only speaks Creole and is illiterate, and advised both officers of this at the start of the interrogation.

One of the officers, speaking Creole, attempted to advise Mr. Youte of his Miranda rights, but failed to adequately do so. Among other things, the officer did not adequately advise Mr. Youte of his right to remain silent, that anything he was to say could be used against him in court or other proceedings, that he had the right to consult an attorney before making any statements or answering any questions, that he had the right to have an attorney present during all questioning, that an attorney would be appointed if he could not afford one, and that he had the right to stop questioning at any time or to stop the questioning for the purpose of consulting an attorney.

Unable to sign his own initials, Mr. Youte marked the English-language Statement of Rights form with a "+" symbol at various parts of the form as directed by the officers. Mr. Youte did not knowingly, intelligently, and voluntarily waive his Miranda rights before the officers proceeded to interrogate him. In response to the officers' interrogation, Mr. Youte made incriminating statements. During the interrogation, the officers asked Mr. Youte about his cellular phone and wrote a description of the same in the English-language Consent to Search form. Mr. Youte then marked that form with a "+" symbol as directed by the officers. No warrant to search the cellular phone was obtained. After approximately 49 minutes of

interrogating Mr. Youte, the officers terminated the interrogation.

Several hours after the initial 45-minute interrogation, two law enforcement officers returned to a room at their office with Mr. Youte. No attempt was made to administer Miranda warnings to Mr. Youte immediately before the start of this second interrogation. The officers proceeded to interrogate Mr. Youte for approximately 20 minutes and Mr. Youte made incriminating statements in response to the interrogation.

Mr. Youte was subsequently charged with bulk cash smuggling and making false statements in violation of federal law.

Argument

1. **The Court should suppress all physical evidence under the Fourth Amendment.**

The Fourth Amendment prohibits law enforcement from conducting "unreasonable searches and seizures." U.S. Const. amend. IV. Where a search is conducted without a warrant, the search is presumptively unreasonable and in violation of the Fourth Amendment:

> The Fourth Amendment proscribes all unreasonable searches and seizures, and it is a cardinal principle that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions."

Mincey v. Arizona, 437 U.S. 385, 390 (1978).

In the case of a warrantless search, "the burden of proof shifts to the state to establish that an exception to the search warrant requirement was applicable in the subject case and that the search and seizure was, in fact, a reasonable one." United

States v. Bachner, 706 F.2d 1121, 1126 (11th Cir. 1983) (citing Coolidge v. New Hampshire, 403 U.S. 443, 455 (1961)).

The search of Mr. Youte's cabin onboard the vessel was a warrantless search unsupported by any exception to the warrant requirement. Therefore, the Court should suppress all physical evidence seized from Mr. Youte's cabin onboard the vessel.

To the extent that the government relies on the so-called "border search" exception to the warrant requirement, that exception does not apply. The Eleventh Circuit has held that a routine border search of a commercial ship crewmember's cabin can be conducted without a warrant or suspicion of wrongdoing. United States v. Alfaro-Moncada, 607 F.3d 720, 732 (11th Cir. 2010).

Mr. Youte objects to the reasoning of Alfaro-Moncada, and respectfully submits that the decisions of other circuits, requiring reasonable suspicion to search such areas onboard a vessel, are more persuasive and consistent with the Fourth Amendment. See, e.g., United States v. Whitted, 541 F.3d 480, 488 (3d Cir. 2008); United States v. Smith, 273 F.3d 629, 633 (5th Cir. 2001); United States v. Alfonso, 759 F.2d 728, 738 (9th Cir. 1985). There was no reasonable suspicion to search Mr. Youte's cabin, and therefore, under these other circuit authorities, any physical evidence seized from the cabin must be suppressed. However, we acknowledge that Alfaro-Moncada is binding circuit precedent at this time.

But notwithstanding Alfaro-Moncada, this Court should insist on a showing of reasonable suspicion to search the small box found within the cabin. Alfaro-

Moncada concerned a routine border search of a cabin onboard a vessel. 607 F.3d at 728-29. It acknowledged that a showing of reasonable suspicion is required in the case of highly intrusive searches, such as strip searches and x-ray examinations of a person's body. Id. at 729.

Another type of border search considered by courts to be highly intrusive, and therefore requiring a showing of reasonable suspicion, is a search involving destruction of property. See United States v. Rivas, 157 F.3d 364, 367 (5th Cir. 1998) (drilling into the frame of an auto-body trailer at border requires reasonable suspicion). See also United States v. Flores-Montano, 541 U.S. 149, 154 n. 2 (2004) (leaving open question of whether a border search involving destruction of property requires reasonable suspicion); United States v. Joseph, No. 12-8003-Cr-Ryskamp, 2012 WL 163886, at *3 (S.D. Fla. Jan. 19, 2012) ("In some circumstances, the government must have reasonable suspicion to perform a search at the border. But those instances generally are confined to 'highly intrusive searches of the person,' such as strip searches or body cavity searches, . . . searches carried out in a 'particularly offensive manner,' or searches that are destructive of property.") (citations omitted; emphasis added).

The search of the small box in the cabin required reasonable suspicion because it was conducted in a particularly intrusive or offensive manner. Specifically, it involved the law enforcement officers cutting the box open, and therefore, causing a degree of destruction of property. The officers lacked reasonable suspicion to search the cabin and cut the small box open. The physical evidence

discovered as a result of the search of the small box should therefore be suppressed.

Moreover, the search of Mr. Youte's cellular phone was a warrantless search unsupported by any exception to the warrant requirement. Therefore, the Court should suppress all physical evidence seized from the phone.

To the extent that the government relies on the consent exception to the warrant requirement, that exception does not apply. The Fourth Amendment requires the government to "demonstrate that the consent was in fact voluntarily given, and not the result of duress or coercion, express or implied." Schneckloth v. Bustamante, 412 U.S. 218, 248–49 (1973); see also id. at 228 ("[T]he Fourth . . . Amendment[ ] require[s] that a consent not be coerced, by explicit or implicit means, by implied threat or covert force."). "For, no matter how subtly the coercion was applied, the resulting 'consent' would be no more than a pretext for the unjustified police intrusion against which the Fourth Amendment is directed." Id. at 228. Thus, it is well-established that "[t]he Fourth Amendment can certainly be violated by guileful as well as by forcible intrusions into a constitutionally protected area." Hoffa v. United States, 385 U.S. 293, 301 (1966). In short, a "consensual search is constitutional if it is . . . the product of an essentially free and unconstrained choice.'" United State v. Purcell, 236 F.3d 1274, 1281 (11th Cir. 2001) (quoting Schneckloth, 412 U.S. at 225). "In assessing voluntariness, the inquiry is factual and depends on the totality of the circumstances." *Id.*

Under the totality of the circumstances, Mr. Youte did not give valid consent to search his cellular phone. He is illiterate. The form signed was in English. He

was not adequately apprised of his right to refuse consent. Any evidence discovered as a result of the search of the cellular phone must be suppressed.

2. The Court should suppress all statements under the Fifth Amendment and Miranda.

Miranda and its progeny provide protection against police overreaching during questioning. The Fifth Amendment commands that no person "shall be a witness against himself." U.S. Const., amend. V. In order "to implement the Self-Incrimination Clause . . . [the Supreme Court] in Miranda concluded that 'the accused must be adequately and effectively apprised of his rights and the exercise of those rights must be fully honored.'" Missouri v. Seibert, 542 U.S. 600, 608 (2004) (quoting Miranda v. Arizona, 384 U.S. 436, 467 (1966)). As the Court explained, "Miranda conditioned the admissibility at trial of any custodial confession on warning a suspect of his rights: failure to give the prescribed warnings and obtain a waiver of rights before custodial questioning generally requires exclusion of any statements obtained." *Id.*

Accordingly, before the government can introduce at trial statements made during custodial interrogation, it bears the burden of demonstrating that the statements were obtained in compliance with the Fifth Amendment and Miranda. *See id.* at 610 n.1. It must prove that a defendant in custody knowingly, intelligently, and voluntarily waived his Miranda rights before responding to interrogation. Colorado v. Connelly, 479 U.S. 157, 167-71 (1986).

The test for whether one is in "custody" for Miranda purposes is whether

"under the totality of the circumstances, a reasonable man in the suspect's position would feel a restraint on his freedom of movement to such an extent that he would not feel free to leave." United Sates v. Muegge, 225 F.3d 1267, 1270 (11th Cir. 2000).

Moreover, the "term 'interrogation' under Miranda refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response." Holland v. Florida, 775 F.3d 1294, 1321 (11th Cir. 2014) (quoting Rhode Island v. Innis, 446 U.S. 291, 301 (1980)).

Mr. Youte's statements on board the vessel should be suppressed. The law enforcement officers placed him in custody after boarding the vessel. After he was in custody, he was subjected to interrogation. He was not given any Miranda warnings while on board the vessel by any law enforcement and did not waive any Miranda rights. His statements to law enforcement on board the vessel must therefore be suppressed.

Mr. Youte's statements at law enforcement's office must also be suppressed because they were not preceded by adequate Miranda warnings or a valid waiver by Mr. Youte of his Miranda rights.

Miranda prescribed that individuals in custody must be given the following warnings prior to interrogation:

> [A suspect] must be warned prior to any questioning [1] that he has the right to remain silent, [2] that anything he says can be used

> against him in a court of law, [3] that he has the right to the presence of an attorney, and [4] that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

Florida v. Powell, 559 U.S. 50, 60 (2010) (quoting Miranda, 384 U.S. at 479).

With respect to the right to counsel, the Supreme Court has reiterated that "an absolute prerequisite to interrogation" is that an individual held for questioning "must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation." Powell, 559 U.S. at 60 (quoting Miranda, 384 U.S. at 471). In particular, it is critical that a defendant be advised that his right to counsel not be "linked to a future point in time after police interrogation," but rather, that he by advised of his "rights to a lawyer in general, including the right to a lawyer before you are questioned, ... while you are being questioned, and all during the questioning." California v. Prysock, 453 U.S. 355, 361 (1981) (quotations omitted).

Mr. Youte's statements at the officer's office must be suppressed under Miranda. There can be no reasonable dispute that Mr. Youte was in custody at the time he was at the office. Moreover, his statements in response to the officers' questioning were given without being adequately advised of his Miranda rights. He is illiterate. He could not read the English-language Miranda Statement of Rights form. The law enforcement officers did not accurately translate the Statement of Rights form to Mr. Youte from English to Creole. Nor did they otherwise accurately describe the rights guaranteed by Miranda to Mr. Youte in Creole.

Moreover, "a heavy burden rests on the government to demonstrate that the

defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel." Fare v. Michael C., 442 U.S. 707, 724–25 (1979) (quotations omitted). The question whether the accused waived his rights "is not one of form, but rather whether the defendant in fact knowingly and voluntarily waived the rights delineated in the Miranda case." Id.

Whether the defendant knowingly and voluntarily waived his Miranda rights is based on the totality of the circumstances, which includes an evaluation of the defendant's "experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights." Id. Ultimately, the waiver must have been made with a "full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." Moran v. Burbine, 475 U.S. 412, 421 (1986). A "signed waiver form does not have talismanic powers; it is merely one piece of evidence to be considered in the totality of the circumstances analysis." Hart v. Attorney General, 323 F.3d 884, 893 n.18 (11th Cir. 2003).

In addition to not being adequately advised of his Miranda rights, Mr. Youte did not effectively waive his Miranda rights before making incriminating statements to the officers at their office. Under the totality of the circumstances, Mr. Youte did not waive his Miranda rights with a sufficient awareness of the rights to be abandoned and the consequences of the decision to abandon those rights. For this reason as well, his statements at the office must be suppressed.

Conclusion

Wherefore, for the foregoing reasons, the Defendant Hubert Youte respectfully requests entry of an order suppressing all physical evidence and statements made by him. We respectfully request an evidentiary hearing.

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CERTIFICATE OF SERVICE

I HEREBY certify that on April 11, 2017, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or *pro se* parties identified in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Alex Arteaga-Gomez

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 17-20178-CR-WILLIAMS

UNITED STATES OF AMERICA

v.

HUBERT YOUTE,

Defendant.
_____/

UNITED STATES OF AMERICA'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS AND REQUEST FOR EVIDENTIARY HEARING

The United States of America, by and through the undersigned Assistant United States Attorney, hereby files this Response to the Defendant's Motion to Suppress and Request for Evidentiary Hearing ("Motion") (DE17), and respectfully requests that this Court enter an order denying the motion without a hearing.

Defendant makes four main arguments. First, Defendant argues that this Court should ignore binding precedent and suppress the evidence found during the border search of Defendant's crew cabin. Second, Defendant claims that evidence found during a consensual search of his cellphone should be suppressed. Third, Defendant claims that his statements to law enforcement during the customs inspection of the vessel, when he falsely denied having more than $10,000 in U.S. Currency, should be suppressed. Fourth, Defendant claims that his voluntary admissions to law enforcement after receiving and waiving his *Miranda* rights should be suppressed.

As an initial matter, the Court should deny the Defendant's motion without a hearing because it lacks specificity. A motion to suppress must be sufficiently definite and detailed to

enable the Court to conclude that a substantial claim is presented. Because Defendant relies solely on general and conclusory assertions, there is an insufficient basis for a hearing. *United States v. Richardson*, 764 F.2d 1514, 1527 (11th Cir. 1985).

In any event, the Court should reject Defendant's motion on its merits. First, as Defendant concedes, Eleventh Circuit law is clear that border searches such as the search at issue here, are not subject to any requirement of reasonable suspicion, probable cause, or warrant. *U.S. v. Alfaro-Moncada*, 607 F.3d 720 (11th Cir. 2010). Thus, it is irrelevant whether or not the Customs officers who searched Defendant's cabin had a warrant or reasonable suspicion. Second, while Defendant consented to the search of his cellphone, because the Government does not intend to offer evidence from the cellphone, the Court need not even address the issue.

Third, Defendant's statements to Customs officers were in response to non-custodial questioning and, at that point, the Defendant was not entitled to be read his *Miranda* rights. Finally, as demonstrated by the video of his interview with law enforcement, Defendant knowingly, intelligently, and voluntarily waived his *Miranda* rights. Therefore, the Court should not suppress any of Defendant's statements to law enforcement.

RELEVANT FACTS

On or about February 27, 2017, an outbound customs inspection of the M/V Doris T, a 259' coastal freighter, was conducted just prior to the vessel's scheduled departure from the United States to Port-de-Paix, Haiti. The vessel was berthed at 3630 NW North River Drive, Miami, Florida. According to the vessel's crew list, a total of eight crew members would be sailing the vessel to Haiti, including Defendant.

At approximately 10:15 am, the search team, consisting of Customs and Border Protection

("CBP") officers as well as members of the Hallandale Beach Police Department and Homeland Security Investigations ("HSI"), arrived at the vessel. The search team had previously received a confidential informant's tip that the M/V Doris T was being used to transport drug proceeds to Haiti. As law enforcement began to consolidate the crew on the stern of the vessel for questioning, HSI Special Agent Rafael Quinquilla encountered Defendant on the starboard side of the vessel. SA Quinquilla asked Defendant, in English, if he was a crew member. Defendant responded, in English, that he was a crew member. Defendant was subsequently asked for his name and directed to move to the rear of the vessel with the other crew members. Defendant complied, providing his name and moving to the rear of the vessel.

Once all eight crew members were assembled in the rear of the vessel, CBP officers advised the crew that an outbound search of the vessel would be conducted. Crew members were then individually escorted to their assigned cabins, where they were asked if they were transporting in excess of $10,000 in U.S. currency or foreign equivalent currency or any firearms or ammunition.

After Defendant was escorted to his cabin, he was asked, in English, if he was transporting more than $10,000 in U.S. currency. Defendant responded in the negative, and did not manifest any confusion or inability to understand the question. When specifically asked if he was carrying in excess of $10,000 for himself or anyone else, Defendant retrieved approximately $2,000 in U.S. currency that had been inside of a pillowcase on his bed. Again, Defendant did not manifest any confusion or inability to understand the question. Defendant was next asked if he had any additional currency. Defendant then removed approximately $42 from the pocket of the pants he was wearing. Defendant was asked again if he had any other currency on his person or in his cabin. Defendant then produced an additional $200 from a pair of pants that had been slung over

a chair in Defendant's cabin. Defendant was asked yet again if there was any additional currency, and Defendant replied that there was not. At this point, Defendant was asked to stand in the hallway leading to his cabin as officers searched the it. At no point did Defendant manifest any confusion or inability to understand the officer's questions or instructions, which were all in English.

During the search of Defendant's cabin, officers discovered a Tide detergent box on a shelf. The box itself had been wrapped in tape. Cutting the tape with a knife revealed that the box contained four packages of currency that had been wrapped with tape and paper. The packages contained approximately 37 individual bundles of currency totaling $36,930.[1]

When Defendant saw that officers had found the Tide box, Defendant stated aloud, in English, that "Jeff" had given him the box and that the box belonged to "Jeff." Defendant was subsequently escorted off the vessel and told, in English, that agents would be questioning him at a later time. Defendant continued to comment, in English, that "Jeff" had given him the box and asked others in the shipyard, in English, if they had seen "Jeff."

Defendant was subsequently transported to the HSI office in Miami to be interviewed. The interview began at approximately 2:45 p.m., and was conducted by HSI Special Agents Victor Lopez and Jacque Philippe. To make absolutely sure that Defendant understood his *Miranda* warnings and could effectively communicate with law enforcement, the interview was conducted in Defendant's native language of Creole and translated by SA Philippe. As demonstrated by the

[1] The Tide box contained $36,940 in bills, however a later scan of the currency determined that one of the ten dollar bills was counterfeit, resulting in a total of $36,930 in valid U.S. currency.

video recording of the interview, at the outset, Defendant was given his *Miranda* rights in Creole. SA Philippe translated each line of an English language *Miranda* form into Creole for Defendant. After translating each line, SA Philippe asked Defendant if he understood that particular warning. Defendant verbally indicated that he understood each right, and marked each line with a "plus sign" to manifest his understanding. Because Defendant claimed that he could not write or sign his name, he was asked to mark the signature line of the form with another "plus sign" (See Attachment A).

During the first interview, Defendant stated that he is the only crew member who lives in the cabin where officers found the Tide box, and everything in the cabin belonged to him except the money found inside the Tide box. Defendant said that an individual known to him as "Jeff" had given him the Tide box sometime on the afternoon of February 26, 2017. Defendant said he took the box to his cabin and placed in the location where officers found it. Defendant admitted that he knew the box contained money, but said that "Jeff" did not tell him how much money the box contained. Defendant said he was supposed to take the money to Haiti, and that once in Haiti, "Jeff" would pick up the box from Defendant. During the interview, Defendant verbally consented to a search of his cellphone, a Samsung flip phone, and also marked the signature line of a written consent form, again with a "plus sign." The interview concluded at approximately 3:30 p.m.

Later that evening, at approximately 8:54 p.m., Defendant was interviewed again, this time by Special Agents Quinquilla and Philippe. The interview was again recorded by video and conducted in Creole, with SA Philippe translating. Prior to the second interview, Defendant was reminded of his *Miranda* rights, and agreed again to waive those rights and answer questions.

During the second interview, Defendant said that he did not know where "Jeff" got the money that was in the Tide box.

ANALYSIS

I. The Search of Defendant's Cabin Was a Routine Border Search, Not Subject to Any Requirement of Warrant or Reasonable Suspicion.

Defendant argues that because his cabin was searched without a warrant and without any suspicion that Defendant was engaged in criminal activity, all evidence obtained during the search should be suppressed.

The Fourth Amendment does not require warrants for routine stops and searches at the border. *United States v. Montoya de Hernandez*, 473 U.S. 531, 537 (1985) (executive branch has plenary authority to conduct warrantless routine searches to regulate the collection of duties and to prevent the introduction of contraband); *Denson v. United States*, 574 F.3d 1318, 1340 (11th Cir. 2009) (customs may inspect luggage, pat down international traveler at airport without any level of suspicion). Under the "border search" exception to the warrant requirement, routine border stops and searches of persons, luggage, personal effects, and vehicles may be conducted without probable cause or reasonable suspicion. *Montoya de Hernandez*, 473 U.S. at 538. Most searches of persons, luggage, personal effects, and vehicles are sufficiently nonintrusive to qualify as routine border searches. *Almeida–Sanchez v. United States*, 413 U.S. 266, 272 (1973). The border search doctrine applies equally to searches of persons and property exiting the United States as to those entering the country. *See United States v. Hernandez–Salazar*, 813 F.2d 1126, 1137–38 (11th Cir.1987) (noting that "[e]very circuit that has considered the question has ruled that the rationales for the 'border exception' apply both to incoming and outgoing persons and instrumentalities" (citations omitted)).

In *United States v. Alfaro–Moncado*, 607 F.3d 720, 720 (11th Cir. 2010), the Eleventh Circuit made clear that the border search exception applies to a crew member's cabin. Noting that "any expectation of privacy a crew member has in his living quarters is weaker when those quarters are brought to the border of this country," *Id.* at 732, the court held that the suspicionless search of a crew member's cabin on a foreign cargo ship docked on the Miami River was not a violation of the Fourth Amendment. Because Defendant's cabin was searched pursuant to the border inspection of a foreign cargo ship, there was no requirement of suspicion or a warrant.

Defendant objects to the "reasoning" of *Alfaro-Moncada* and urges the Court to follow instead older decisions from other circuits suggesting that reasonable suspicion should have been required for the search in this case (DE 17:5).[2] By doing so, Defendant effectively concedes that *Alfaro-Moncada* applies, and there is no basis for this Court to depart from this binding Eleventh Circuit precedent. *See Smith v. Casey*, 2013 WL 12064515, at *2 (S.D. Fla. Apr. 5, 2013) ("Even if the Court were to find Plaintiff's reasoning persuasive, it is bound only by Eleventh Circuit precedent."). Accordingly, the Court should not exclude any physical evidence obtained during the search of Defendant's cabin.

Defendant is also wrong to suggest that some kind of heightened standard applies to the search of the Tide box itself. While reasonable suspicion may be required, even at the border, for "highly intrusive searches of a person's body, such as a strip search or an x-ray examination"

[2] Even assuming *arguendo* that reasonable suspicion was required, law enforcement had a sufficient justification to search the Defendant's cabin. The agents had previously received a confidential informant's tip that the vessel was being used to carry drug money to Haiti. This fact, combined with the Defendant's initial denial that he was carrying currency greater than $10,000, followed by his piecemeal production of smaller amounts of cash in response to further questioning, provided reasonable suspicion that Defendant was hiding currency.

Alfaro-Moncada, 607 F.3d at 729, the search of the Tide box, found out in the open, on a shelf in Defendant's cabin, was not such a highly intrusive search, and did not involve the Defendant's body. Nor did cutting into the Tide box involve such a degree of "destruction of property" as to give rise to any additional need for reasonable suspicion. Even if it had, the fact that the Tide box had been wrapped in additional tape which is not part of the original packaging provided law enforcement with reasonable suspicion that something other than detergent was contained inside the box.

II. The Government Does Not Intend To Offer Any Evidence Obtained From Defendant's Cellphone.

Defendant argues that the search of Defendant's cellphone was a warrantless search unsupported by any exception to the warrant requirement and that all evidence obtained from the phone should be suppressed. Not so. To the extent consent was even needed for the search of the cellphone during a border search,[3] Defendant provided verbal consent for the search, and manifested his consent by marking a consent form provided by the agents.

In any event, the Government does not intend to offer at trial any evidence obtained from Defendant's cellphone, and so Defendant's motion to suppress such evidence should be denied as moot.

[3] Searches of computers and electronic devices are considered routine searches that may be conducted in the absence of reasonable suspicion. See *United States v. Joseph*, 2012 WL 163886, at *3 (S.D. Fla. Jan. 19, 2012) (concluding that "the search of a cell phones [] qualify as a border search and does not require reasonable suspicion"); *United States v. Cotterman*, 709 F.3d 952 (9th Cir. 2013) (holding that reasonable suspicion only required for non-routine forensic examination of laptop and digital camera and that "a routine customs search [] is 'analyzed as a border search' and requires neither probable cause nor reasonable suspicion").

III. Defendant Was Not In Custody When He Falsely Denied Carrying Over $10,000 In U.S. Currency.

Defendant makes the conclusory assertion that he was "in custody" from the moment Customs officers boarded the vessel and engaged in their inspection process and that because he was not *Mirandized* prior to being asked routine customs questions, his statements to law enforcement while on board the vessel, including his false denials about the cash in the Tide box, should be suppressed. But Defendant was not in custody, and he was not entitled to be *Mirandized* before routine border questioning.

Under the Supreme Court's decision in *Miranda v. Arizona*, 384 U.S. 436 (1966), a government agent must notify a person about his or her right against self-incrimination (among other rights) if the person is (a) in custody and (b) being interrogated by a government agent. However, the *Miranda* rule has a special application in the context of questioning at the border. "[B]ecause of the sovereign interest in securing entry points to the United States, some degree of questioning and of delay is necessary and is to be expected at entry points." *United States v. Jayyousi*, 657 F.3d 1085, 1109 (11th Cir. 2011) (internal quotation marks and citation omitted)). As a result, "questioning at the border must rise to a distinctly accusatory level before it can be said that a reasonable person would feel restraints on his ability to roam to the degree associated with formal arrest." *Id.* (internal quotation marks omitted). Put another way, because a reasonable person should expect a certain degree of questioning and processing at the border, "events which might be enough often to signal 'custody' away from the border will not be enough to establish 'custody' in the context of entry into the country." *United States v. Moya*, 74 F.3d 1117, 1120 (11th Cir. 1996). Indeed, restrictions on an individual's movement that are the result of a routine border inspection do not entitle an individual to *Miranda* warnings. *See United States*

v. *Manta-Carillo*, 491 F. App'x 125, 128 (11th Cir. 2012) ("[W]e recognize that [the defendant] was unable to leave the [ship] and the [ship] was unable to leave the port during the inspections; however, these restrictions on his movements were the result of a routine border inspection.").

In *Manta-Carillo*, the defendant was the captain of a commercial ship that arrived in Mobile, Alabama from Port au Prince, Haiti. When the ship arrived in Mobile, officials boarded the vessel to conduct an inspection. During the search, the defendant, who had not been given *Miranda* warnings, admitted to possessing child pornography on his computer. The Eleventh Circuit rejected the defendant's claim of a *Miranda* violation, holding that the defendant had not shown that he was in custody at any point. The court noted that the defendant was not physically restrained, was never formally accused of anything, and was never told that he could not leave or terminate the interview. While recognizing that the defendant was unable to leave the ship and the ship was unable to leave the port during the inspections, the Eleventh Circuit held that these restrictions on his movement were the result of a routine border inspection, and did not constitute "custody" for Fifth Amendment purposes.

Similarly, in *United States v. McDowell*, 250 F.3d 1354, 1359 (11th Cir. 2011), the defendant was questioned for approximately four hours at an entry point and was even accused of lying. Again, the Eleventh Circuit held that the defendant was *not* in custody. *McDowell*, 250 F.3d at 1363. In reaching this holding, the court again noted the fact that the questioning took place in the border context. *Id.*

Here, Defendant was never physically restrained during the inspection, no formal accusations were made, and Defendant was never told he could not leave or terminate the questioning by Customs agents. While Defendant's movement was restricted during the

inspection, those restrictions were merely a result of and incident to the border inspection. The questions asked by law enforcement officers – questions about whether he was carrying more than $10,000 in U.S. currency – are routinely asked during border inspections. Accordingly, Defendant was not "in custody" for purposes of the *Miranda* rule, and his statements to law enforcement, including his false denials regarding his possession of U.S. currency, should not be excluded from trial.

IV. The Defendant Knowingly, Intelligently, and Voluntarily Waived his *Miranda* Rights

Finally, the Defendant argues that law enforcement violated the Fifth Amendment when it subjected him to custodial interrogation without first securing a voluntary waiver of his *Miranda* rights.

The Fifth Amendment provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. Before a court may admit a defendant's incriminatory statements, the government must prove by a preponderance of the evidence that the defendant made a knowing, voluntary and intelligent waiver of his *Miranda* rights. *United States v. Farris*, 77 F.3d 391, 396 (11th Cir. 1996). Courts determine voluntariness based upon the totality of the circumstances. *United States v. Barbour*, 70 F.3d 580, 584 (11th Cir. 1995).

A motion to suppress must in every critical respect be sufficiently definite, specific, detailed, and non-conjectural to enable the Court to conclude that a substantial claim is presented. A court need not act upon general or conclusory assertions founded on mere suspicion or conjecture. *United States v. Richardson*, 764 F.2d 1514, 1527 (11th Cir. 1985).

Here, Defendant's motion is premised entirely on the conclusory assertion that "the law enforcement officers did not accurately translate the Statement of Rights form to Mr. Youte from English to Creole." (DE17 at 10). However, does not identify what was supposedly inaccurate or missing from the translation. Defendant does not identify any words that were mistranslated, and does not suggest that any alternative translation was more accurate. Defendant also makes the conclusory assertion that he did not "effectively waive his *Miranda* rights" (DE17 at 11). Again, however, Defendant does not present any evidence supporting this assertion, or even explain what facts supposedly rendered his waiver ineffective. Because Defendant merely relies on conclusory assertions, and offers no evidence to support his motion, there is no basis for a hearing regarding Defendants' post-arrest admissions. At a minimum, before conducting a hearing on this claim, Defendant should be required to specify what he claims was inaccurate in SA Philippe's translation of the standard *Miranda* waiver form.

In fact, the completeness and accuracy of the *Miranda* warnings given to Defendant, as well as his knowing and voluntary waiver of his rights, are demonstrated by the video recording of the Defendant's interview with law enforcement.[4] The video shows that SA Philippe translated into Creole each of the rights, taken from the standard Miranda form, and that Defendant acknowledged each individual line by marking that line with a "plus sign" (see Attachment A). Thus, Defendant advised in Creole of his right to remain silent, that anything he said could be used against him in court or other proceeding, that he had the right to consult an attorney before making

[4] The Government is preparing a transcript of the portion of the video recording of law enforcement agents advising Defendant of his Miranda rights, and his subsequent waiver of those rights. The transcript and a copy of the video will be provided to the Court as soon as both are available.

any statements or answering any questions, that he had the right to have an attorney present during all questioning, that an attorney would be appointed if he could not afford one, and that he had the right to stop questioning at any time or stop the questioning for the purpose of consulting an attorney.

The video also shows that prior to the continuation of his interview, the Defendant was reminded of his *Miranda* rights and confirmed his agreement to continue speaking with law enforcement officers. Accordingly, the post-*Miranda* admissions made by Defendant should not be suppressed.

CONCLUSION

For the foregoing reasons, the undersigned respectfully requests that this Court deny the Defendant's Motion without a hearing.

Respectfully submitted,

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ACTING UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing document with the Clerk of the Court using CM/ECF on April 19, 2017.

/s/ *Robert Juman*
ROBERT JUMAN
Assistant United States Attorney

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 17-20178-CR-WILLIAMS/TORRES

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HUBERT YOUTE,

Defendant.
_____/

Defendant's Reply in Support of Motion to Suppress

The Defendant, Hubert Youte, through undersigned counsel, submits the following reply in support of his motion to suppress.

I. The government must establish reasonable suspicion to cut open the Tide box because it involved the destruction of property.

The government argues that "cutting into the Tide box [did not] involve such a degree of 'destruction of property' as to give rise to any additional need for reasonable suspicion." DE21:8. Its theory appears to proceed from the premise that a cardboard detergent box itself carries little value. But the Supreme Court has rejected this sort of line-drawing based on the perceived value of the container:

> One point on which the Court was in virtually unanimous agreement in *Robbins* was that a constitutional distinction between "worthy" and "unworthy" containers would be improper. Even though such a distinction perhaps could evolve in a series of cases in which paper bags, locked trunks, lunch buckets, and orange crates were placed on one side of the line or the other, the central purpose of the Fourth Amendment forecloses such a distinction. For just as the most frail cottage in the kingdom is absolutely entitled to the same guarantees of privacy as the most majestic mansion, so also may a traveler who carries a toothbrush and a few articles of clothing in a paper bag or knotted scarf claim an equal right to conceal his possessions from official inspection as the sophisticated executive with the locked attaché case.

United States v. Ross, 456 U.S. 798, 822 (1982). The *Ross* Court made clear that the constitutional protection afforded a closed container turns on the degree of effort to keep its contents private, not on its mere physical composition:

> If the distinction is based on the proposition that the Fourth Amendment protects only those containers that objectively manifest an individual's reasonable expectation of privacy, however, the propriety of a warrantless search necessarily would turn on much more than the fabric of the container. A paper bag stapled shut and marked "private" might be found to manifest a reasonable expectation of privacy, as could a cardboard box stacked on top of two pieces of heavy luggage. The propriety of the warrantless search seemingly would turn on an objective appraisal of all the surrounding circumstances.

Id. at 822 n.30.

In this case, the officers cut open the cardboard Tide box with a knife. It was opaque, its contents were not clear from the outside, it was reinforced with tape, and it was contained within Mr. Youte's private quarters onboard the ship. There was a clearly expressed privacy interest in the box's contents, and the officers clearly engaged in a destruction of property by cutting the box open. That the box itself may have been of de minimis value is irrelevant to the question of whether the search was highly intrusive.

II. The officers lacked reasonable suspicion to search the Tide box.

The government argues that the officers had reasonable suspicion to search the Tide box because the agents had received a confidential informant tip that the vessel was being used to carry drug money to Haiti, Mr. Youte initially denied that he was carrying more than $10,000 in U.S. currency, and that he made a piecemeal production of smaller amounts of cash in response to questioning. DE21:7 n.2.

These facts fail to establish reasonable suspicion to cut open the Tide box. An informant's tip must be reliable to supply reasonable suspicion. *Adams v. Williams*, 407 U.S. 143, 147 (1972). Reliability may be established with evidence that the tip included specific and

accurate predictive information, that that the informant had previously proved reliable and gave specific information about the suspect's criminal activity, and that the tip was corroborated by other investigative steps. *See, e.g., United States v. Major*, 341 Fed. Appx. 549, 550 (11th Cir. 2009) (tip supported reasonable suspicion where "officers observed the vehicle act consistently with information provided by the confidential informant"), *United States v. Harrelson*, 465 Fed. Appx. 866, 868 (11th Cir. 2012) (tip provided by "a known, previously reliable CI that Little Rob was a supplier of methamphetamine and drove a red Ford F-150 truck"), *United States v. Baggin*, 354 Fed. Appx. 396, 398-99 (11th Cir. 2009) ("First, the CI had worked reliably with the officers and previously provided accurate information. Second, there was significant evidence corroborating the tip. . . . Furthermore, Baggin was stopped while driving toward the location of the drug deal."). The government has not cited evidence sufficiently establishing the reliability of the confidential informant or the tip provided. The officers also lacked any other basis to believe that Mr. Youte was carrying drug proceeds or that the Tide box contained drug proceeds. There was a lack of reasonable suspicion to cut the box open.

III. Mr. Youte was not adequately advised that his statements could be used to incriminate him.

As noted in *Miranda*, the warning that any statement an accused gives to law enforcement agents will be used against him in court is imperative to an accused's understanding of the *Miranda* warnings:

> The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the individual in court. This warning is needed in order to make him aware not only of the privilege, ***but also of the consequences of foregoing it***. It is only through an awareness of these consequences that there can be any assurance of real understanding and intelligent exercise of the privilege. Moreover, this warning may serve to make the individual more acutely aware that he is faced

> with a phase of the adversary system – that he is not in the presence of persons acting solely in his interest.

Miranda v. Arizona, 384 U.S. 436, 469 (1966) (emphasis added). While the Supreme Court has never required *Miranda* warnings to follow a rigid script, it does require the warnings to "reasonably convey [to a suspect] his rights as required by *Miranda*." *Florida v. Powell*, 559 U.S. 50, 60 (2010) (internal quotations omitted). Thus, to be valid, a *Miranda* waiver must have been made with a "full awareness of both the nature of the right being abandoned and ***the consequences of the decision to abandon it***." *Moran v. Burbine*, 475 U.S. 412, 421 (1986) (emphasis added); *Fare v. Michael C.*, 442 U.S. 707, 724–25 (1979) (court must examine totality of circumstances to determine whether the accused had "the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, ***and the consequences of waiving those rights***") (emphasis added). *See also United States v. Street*, 472 F.3d 1298, 1304, 1312 (11th Cir. 2006) (warning deficient where officer merely orally advised defendant "that he had the right to remain silent and a right to have a lawyer present," which was a problem of "substance and omission" because defendant "was not told that anything he said could be used against him in court"). Not only must "[t]he warning . . . be clear and not susceptible to equivocation, but *Miranda* also requires . . . meaningful advice to the unlettered and unlearned in language which they can comprehend and on which they could knowingly act." *United States v. Perez-Lopez*, 348 F.3d 839, 848 (9th Cir. 2003) (internal quotations and brackets omitted).

With respect to this aspect of the Miranda warning, Mr. Youte was advised: "Anything you tell us, we can ~~use~~ it in [U/I], in court or [U/I] . . . ." We strike the word "use" because it was said in English and not translated to Creole for Mr. Youte. Thus, this warning was communicated to Mr. Youte in Creole as, "Anything you tell us, we can . . . it in . . ., in court . . . ." This did not convey to Mr. Youte that his statements would be *used against him* in court. His ability to

appreciate the warning was further complicated by the fact that he is a Haitian national, is illiterate, and has no experience in the American criminal justice system or in the receipt of *Miranda* warnings.

IV. The warnings placed impermissible conditions on Mr. Youte's right to counsel during police questioning.

Mr. Youte was informed in Creole he had the following rights with respect to an attorney: "You have the right to contact an attorney before you make any statements. After you give us any statements. You have the right to have an attorney present with you while being questioned. If you don't have… If you cannot pay an attorney yourself [ph]. They will get you one before [Pause]… [Beeping noise] … If you cannot get an attorney on your own then they will appoint you one before if you need one."

Miranda requires that an accused be informed that he has the right to consult with an attorney before any interrogation begins *and* have his attorney present during any interrogation if the accused wishes. *Miranda*, 384 U.S. at 470. In *Prysock*, the Supreme Court stated that when "reference to appointed counsel was linked to a future point in time after police interrogation" it did not "fully advise the suspect of his right to appointed counsel before such interrogation." *California v. Prysock*, 453 U.S. 355, 360 (1981). *See also Duckworth v. Eagan*, 492 U.S. 195, 204–05 (1989) (In "*Prysock*, . . . we suggested that *Miranda* warnings would not be sufficient "if the reference to the right to appointed counsel was linked [to a] future point in time *after* the police interrogation.") (emphasis in original). *See, e.g., also, United States v. Wysinger*, 683 F.3d 784, 798, 803 (7th Cir. 2012) (warning deficient where agent told defendant he had "a right to talk to a lawyer for advice before we ask any questions or have one—have an attorney with you during questioning," and agent drew a distinction between "questioning" and "advice" phases of

interrogation, "both of which qualify as interrogation," where "*Miranda* clearly requires that a suspect be advised that he has the right to an attorney both before and during questioning").

Moreover, *Miranda* requires that the indigent be clearly advised that they have an unqualified right to counsel. *See Miranda*, 384 U.S. at 473 ("The warning of a right to counsel would be hollow if not couched in terms that would convey to the indigent—the person most often subjected to interrogation—the knowledge that he too has a right to have counsel present."). Thus, in *Perez-Lopez*, the court found a *Miranda* warning translated from English to Spanish deficient where it stated, "you have the right to solicit the court for an attorney if you have no funds." 348 F.3d at 847. As the court explained, the "warning was constitutionally infirm because it did not convey to him the government's *obligation* to appoint an attorney for indigent accused. To be required to 'solicit' the court, in the words of Torres's warning, implies the possibility of rejection."

Id. at 848 (emphasis in original). *See also United States v. Botello-Rosales*, 728 F.3d 865, 867 (9th Cir. 2013) (warning translated from English to Spanish stating, "If you don't have the money to pay for a lawyer, you have the right. One, who is free, could be given to you," found deficient where detective used the word "libre" for "free," "libre" in Spanish translates to "free" as in "being available or at liberty to do something," and the "phrasing of the warning – that a lawyer who is free could be appointed – suggests that the right to appointed counsel is contingent on the approval of a request or on the lawyer's availability, rather than the government's absolute obligation").

The warning placed two impermissible conditions on Mr. Youte's right to the presence of counsel during questioning. First, by including the sentence, "After you give us any statements," immediately before, "You have the right to have an attorney present with you while being

questioned," the agent suggested that the right to have an attorney present during "questioning" was conditioned on first giving a "statement." Second, by inserting the phrase "if you need one" at the end of the statement, "If you cannot get an attorney on your own then they will appoint you one before if you need one," the agent suggested that appointment of counsel required some showing of "need" separate and apart from indigence. It is like the advice in *Perez-Lopez* where the defendant was advised that he would need to "solicit" the court for counsel if he lacked the funds, and like the advice in *Botello-Rosales* where the officer suggested that appointment of counsel was contingent on something other than indigence.

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CERTIFICATE OF SERVICE

I HEREBY certify that on May 4, 2017, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or *pro se* parties identified in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Alex Arteaga-Gomez_____

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 17-20178-Cr-WILLIAMS

UNITED STATES OF AMERICA,
Plaintiff,
-v-
HUBERT YOUTE,
Defendant.

Miami, Florida
May 4, 2017
2:15 p.m.

Pages 1-98

TRANSCRIPT OF HEARING ON MOTION TO SUPPRESS

BEFORE THE HONORABLE EDWIN G. TORRES

U.S. MAGISTRATE JUDGE

APPEARANCES:

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(Interpreter present)

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STENOGRAPHICALLY RECORDED COMPUTER-AIDED TRANSCRIPT

(Call to order of the Court)

THE COURT: Good afternoon. Have a seat.

THE COURTROOM DEPUTY: Calling case United States versus Herbert Youte, case number 17-20178-Criminal-Judge Williams first superseding.

Counsel, please state your appearances for the record.

MR. JUMAN: Thank you. Good afternoon, Your Honor. Robert Juman for the Government. With me at counsel table is Kurt Lunkenheimer and Special Agent Rafael Qunquilla from HSI.

THE COURT: Good afternoon.

Appearance from the defendant.

MR. ARTEAGA-GOMEZ: Good afternoon, Your Honor. Alex Arteaga-Gomez and Bumi Lomax on behalf of Mr. Youte, who's present in Court, in custody and using the services of a Creole interpreter.

THE COURT: Thank you. Good afternoon. Have a seat.

This is a motion to suppress requested filed by the defendant in connection with the case that was referred to me for disposition.

Turning to the defendant briefly just for purposes of organizing what we need to do, is there any factual dispute that we need testimony on with respect to the search issue?

MR. ARTEAGA-GOMEZ: Yes, Your Honor.

THE COURT: And the nature of the dispute. I read

your brief basically agreeing to the facts. But you're arguing a different application than the Government to those facts. Am I incorrect on that?

MR. ARTEAGA-GOMEZ: You're not incorrect. I think specifically, at least on the issue of custody, that the case law as cited by the Government refers to the degree of confrontation that's done of the individual being a factor in determining whether it's gone beyond a border inspection into a custodial setting, and I think that depends on the statements and comments made by law enforcement to Mr. Youte. So I think that the testimony may go one way or the other on that issue.

The other issue is if the Court were to agree that the Government has to show a degree of reasonable suspicion in order to break into the Tide box, like we argue, then they have the burden of presenting that there was reasonable suspicion to do that.

If they're relying on a confidential informant's tip as a basis to support that intrusion, then they have to provide some information to support the reliability of the information provided by the tip.

I don't think there's enough information in the response to the suppression motion to support a finding that the tip was reliable and that there isn't otherwise reasonable suspicion to go into the box.

THE COURT: I see. So, if reasonable suspicion was the standard, you're saying that the Government would have to prove that up and there's not sufficient evidence in the record to do that.

MR. ARTEAGA-GOMEZ: That's correct.

THE COURT: All right. Now, let me turn to the Government on that point in terms of who the Government intended to call and who you need to call.

MR. JUMAN: Thank you, Your Honor.

Well, working backwards, the premise of the argument is that if reasonable suspicion is the standard, we have to talk about that. We do have the case agent, Rafael Qunquilla, here as well as the officer who conducted the search and the interrogation as part of the inspection of the boat. They're both available to testify.

But I think Your Honor has identified the issue, which is that's not the law. This was a border search. There's no factual dispute about that, and under the circumstances no reasonable suspicion was necessary.

Accordingly, there's really no issue for the Court to decide other than the legal question which the defense has raised as to whether or not the Court should depart from Eleventh Circuit law. We don't believe there's any basis to do that.

With respect to whether the defendant is in custody,

we also think there are no facts in dispute on that.

There is a case that we cited on point, Montacarillo, which makes the point that a commercial ship that's undergoing inspection has to take certain measures to keep people on the ship in order to conduct a Customs inspection. But that's not custody.

There's no dispute here. The defendant was never restrained. He was never threatened. He was never charged with any offenses. And those would be the facts at issue which might raise a question as to custody. But none of those facts are present here.

THE COURT: I guess on that question, though, the same witness who would be testifying probably on that, whether or not he was in custody issue, for purposes of the first statement, the same witness would be the one who would testify as to what was encountered in the cabin. Is that fair to say?

MR. JUMAN: That is fair to say, Your Honor, yes.

THE COURT: Well, in that case then I can't say -- because I can make certain legal rulings to cut down and save some time. But if we're going to have the same witness up anyway, it doesn't necessarily help me.

MR. JUMAN: We would certainly take Your Honor's advice as to shortening the scope of the hearing to address just those issues that are actually in factual dispute. We believe that the only real factual dispute here at best is

whether or not the defendant's waiver of Miranda rights was knowing and voluntary.

THE COURT: All right. So who do you wish to call then at this point on those two issues initially?

MR. JUMAN: Your Honor, our first witness would be Officer Rodriguez from Customs and Border Protection.

THE COURT: All right. Let's go ahead and call him.

MR. ARTEAGA-GOMEZ: Judge, may we ask that Mr. Youte's hand shackles be removed for the hearing? It's more comfortable sitting down.

THE COURT: I'll let the marshals decide that. From the Court's perspective, it's probably not a problem. But I won't interfere with what they want to do.

This is a case involving bulk cash smuggling, right?

MR. ARTEAGA-GOMEZ: That's right. And he has no criminal history.

THE COURT: All right. So I think in this case it's probably not too big of a risk.

THE COURTROOM DEPUTY: Please raise your right hand.

ANGEL RODRIGUEZ, GOVERNMENT WITNESS, SWORN

THE WITNESS: Please have a seat, sir, and state and spell your name for the record.

THE WITNESS: My name is Angel Rodriguez. A-n-g-e-l, R-o-d-r-i-g-u-e-z.

THE COURTROOM DEPUTY: And your agency, sir.

THE WITNESS: U.S. Customs and Border Protection.
THE COURTROOM DEPUTY: Thank you.
DIRECT EXAMINATION
BY MR. JUMAN:
Q. Officer, I'm going to ask you to speak directly into the microphone and slowly because we have an interpreter here. Okay?
Officer Rodriguez, can you tell us how long you've been with Customs and Border Protection?
A. Going on 12 years, almost 12 years.
Q. What is your job with Customs and Border Protection?
A. I'm assigned to a specialized unit called Anti --
THE REPORTER: Say it again.
BY MR. JUMAN:
Q. You've got to slow down for us. Okay?
A. Okay. It's the Contraband Enforcement Team at the Miami Seaport. Our duties are to inspect inbound and outbound cargo.
Q. All right. Can you tell the Court how many inbound Customs inspections you've done in your 12 years, approximately?
A. Over a thousand inbound inspections.
Q. And how many outbound inspections have you done over that same time period?
A. Estimation, about between 30 and 50 outbound inspections.

Q. Of those outbound inspections, how many of them were on ships, seagoing vessels?
A. About 20.
Q. Directing your attention to February 27, 2017, what was your assignment that day?
A. My assignment was to go do an inspection outbound vessel called the DORIS T to assist HSI and Hallandale Police.
Q. But can you describe briefly what the DORIS T is? How big is it?
A. The DORIS T is a Haitian freighter that delivers cargo to Haiti. It's about roughly between 130 and 150 feet.
Q. How big is the crew?
A. Usually between eight and ten people.
Q. On the 27th of February where was the ship docked?
A. It was at a yard at the river, 3630 North River Drive.
Q. What is that facility?
A. It's a facility that they use to store cargo there, and when the vessels come in, they load the cargo in.
Q. How much cargo did the DORIS T have on it on February 27th?
A. It was loaded. It had vehicles, mattresses, very full.
THE INTERPRETER: I'm sorry.
BY MR. JUMAN:
Q. I'm sorry. Again, you've got to slow down. Try to say that again.

A. It was full. It had vehicles, mattresses, bicycles, full.
Q. In your experience, how long after a foreign cargo ship is loaded does it depart the United States?
A. Right away. Right away. They usually have to make entrance, like they have like 48 hours to do clearance before they have to depart the U.S.
Q. Now, on February 27th, to your knowledge, why was the DORIS T subject to a Customs inspection?
A. From my understanding from my chief, the HSI requested our assistance to go search for outbound currency.
THE COURT: To search for what? I'm sorry.
THE WITNESS: For money.
THE COURT: Oh, outbound currency.
THE WITNESS: Outbound currency, yes.
THE COURT: Outbound currency.
BY MR. JUMAN:
Q. Was there anything different in the way you conducted your inspection that day from the other outbound inspections you described?
A. Not really.
Q. And you mentioned other agencies involved in the inspection. Just for the record, which agencies were also there?
A. Homeland Security Investigations and Hallandale Police Department.

Q. As well as CBP?
A. CBP, yes.
THE COURT: Make sure he finishes his question.
THE WITNESS: Okay.
BY MR. JUMAN:
Q. Officer, can you describe generally the procedure for dealing with the crew during the Customs inspection of a ship?
A. Okay. Usually our normal policy when we're doing an inspection, we usually talk to -- we usually get a crew manifest to determine how many people are on board and we usually talk to the captain to make sure that we try to isolate the crew, like put them in a common area, and we usually assign one of our officers to stay with them.
Q. During the inspection, do you talk to the crew members?
A. During the inspection?
Q. Yes.
A. Yeah. We usually -- we get the list. We call one by one and we take them to the cabin, or vice versa, depending on the job that they do.
Q. And what kinds of questions do you ask them?
A. In that case, in an outbound case, we ask them does everybody in the room belong to you; are you carrying in excess of $10,000, normal outbound like Customs questions, you know.
Q. Before you ask those Customs questions, do you give

Miranda warnings to the crew members?
A. No, sir.
Q. Why not?
MR. ARTEAGA-GOMEZ: Your Honor, I'm going to object on vagueness grounds as to whether he's speaking as a general policy or as to what occurred in this instance.
MR. JUMAN: I can clarify, Your Honor.
THE COURT: You can clarify.
BY MR. JUMAN:
Q. As a general matter, when you do these outbound Customs inspections of a ship, before you ask questions of the crew, do you generally give Miranda warnings?
A. No, sir.
Q. And why not?
A. They're not under arrest.
Q. Now, focusing on February 27th, on this particular occasion, on the DORIS T, where was the crew gathered as part of the procedure you described?
A. That day, I remember they put them on the back of the vessel. We got everyone in the back of the vessel. We had one of our officers watching them the whole time.
Q. On February 27th, among the crew that were gathered at the back of the vessel, did you see the defendant that day?
A. Yes, I did.
Q. Had you seen the defendant before February 27th?

A. I'd seen him before like I guess an inbound. He worked another vessel before. So I seen him a few times in other vessels.
Q. On those occasions when you saw the defendant, was that during a different Customs inspection?
A. Yes.
Q. Approximately how many times do you believe you've inspected a ship on which the defendant was a crew member?
A. Like three or four times.
Q. During those prior inspections, did you speak with the defendant?
A. Yes. Yeah. We question everyone that comes into the U.S., yeah.
Q. What language did you use when speaking with the defendant?
A. English.
Q. On those occasions did the defendant ever show any difficulty understanding your questions?
A. Not the questions that I asked him.
Q. Now, turning your attention back to February 27, 2017, how, if at all, did the defendant's demeanor during this inspection differ from his demeanor in those prior inspections?
A. I know that when I was walking on board, myself and the agent in charge of the case, we saw that his demeanor was a

little bit different that day.
Q. How so?
A. His body language was not the same and his face looked like a little like he was upset that we were there.
Q. During this inspection on the 27th of February, did you question the defendant?
A. Yeah, when we took him to his room.
Q. Can you describe for the Court exactly where the defendant was located and where you were located?
A. Yeah. He was in the back of the vessel, and like I said, we called each individual crewman to their rooms. And when I called Mr. Youte, he escorted us to his room, and myself and my partner, we asked him the questions in his room.
Q. Where within the room was the defendant when you did the questioning?
A. In his cabin.
Q. And where were you standing?
A. We were -- all three of us went inside his room.
Q. And who was the third person you mentioned?
A. Officer Cara. He was my partner that day.
Q. How large is the defendant's cabin?
A. Not very big, maybe like 8x6, not too big.
Q. During the time you were questioning the defendant, was the defendant physically restrained in any way?
A. No, sir.

Q. Did you accuse the defendant of doing anything?
A. Negative. No.
Q. Did you say anything to the defendant about being unable to leave?
A. No.
Q. Did you say anything to him about being unable to terminate the interview if he wanted to?
A. No.
Q. Did you give the defendant any Miranda warnings?
A. No, sir.
Q. Why not?
A. Because, like I said, he's not under arrest.
Q. And before we talk about the specific questions you asked of the defendant, what language were you using to speak with the defendant?
A. English.
Q. And at any point did the defendant express any difficulty understanding you?
A. No, sir.
Q. Did he express any confusion about what you were saying?
A. No, sir.
Q. All right. Now, let's talk about the specific discussion you had with the defendant. Can you take the Court through the questions you asked and the defendant's responses?
A. Okay. Like I say, he escorted us to his room. We told

him to go inside. And myself and my partner, we asked him, is this your room? He goes, yes. Does everything in this room belong to you? He goes, yes. At that time we asked him, are you carrying in excess of $10,000? He said, no. How much money do you have? And at the time, the defendant, he proceeded to a pillowcase in which he pulled out like $2,000 from a pillowcase.

Q. Let me stop you for a second.

Where was the pillowcase?

A. On the bed, on top of the mattress.

Q. And what did the defendant pull from the pillowcase?

A. $2,000.

Q. What happened after he pulled the $2,000 from the pillowcase?

A. We instructed him to put it on the mattress and asked him do you have any more money. He reached into his shirt pocket and he had $42 in his pockets.

Q. What did the defendant do with the $42?

A. Told him to put it on top of the other money.

Q. And where was that?

A. On the mattress.

Q. All right. What happened after he pulled the $42 from his pocket?

A. We told him to empty all his pockets to make sure he had no more money, which he did. My partner asked him, do you

have any more money. And then he proceeded to pull out $200 from another pair of jeans that he had laying on a chair.

Q. Okay. What happened after the defendant -- well, where did the defendant put the $200?

A. On top of the other money that was on top of the mattress.

Q. What happened after the defendant pulled out the $200?

A. We asked him like three different times, did you show us all the money you have? He kept saying, yes, yes. No more money? He goes, no, no, no. Three times we asked him. At that time we counted the money in front of him.

Q. Let me stop you for a second. Who counted the money?

A. Myself.

Q. Did the defendant say anything while you were counting the money?

A. No, sir.

Q. During this interchange that you described, what language were you speaking?

A. English.

Q. What did you do after you finished counting the money?

A. Okay. We told him to stand by the door while we do the search.

Q. Let me be clear. Exactly where did you ask the defendant to stand?

A. Outside the door.

Q. Did the defendant follow your instructions?

A. Yes, he did.
Q. What did you do when the defendant stepped outside?
A. We started a search.
Q. Was the defendant facing into the cabin or outside of the cabin?
A. He was outside the cabin but looking into his room.
Q. Why did you want the defendant to be looking into the room?
A. We usually do that in every -- because we don't want to make sure they say that there was stuff missing (sic). So we usually try to have every crew member look the way we do the inspection.
Q. Can you just briefly describe how you conducted the search?
A. We systemically, you know, started with the mattress, lift up the mattress, pull out drawers. He had a bunch of clothes on top of a chair. Since he pulled out $200 bucks from his jeans, we started looking at the clothes and finished. We didn't find anything else. Then when we went to the top, we saw a little box behind a little curtain. I told my partner, hey, check that box. He happened to reach it, and when we pulled it, it was a Tide box full of tape around it.
Q. Let me ask you to be clear about that. It was what kind of box?
A. A Tide box.

Q. Is that laundry detergent?
A. Yes.
Q. Before we proceed, I just want to be clear. What was it you were looking for during this search?
A. Any illegal contraband leaving the U.S.
Q. Did that include U.S. currency?
A. U.S. currency, weapons, anything.
MR. JUMAN: All right. Your Honor, may I approach?
BY MR. JUMAN:
Q. Agent, I'm showing you what's been previously marked as Government's Exhibit 2.
Agent, do you recognize what's been marked as Government Exhibit 2?
A. Yes.
Q. What is that?
A. That's the Tide box.
Q. Is this in the condition you found it or is this after?
A. No, no. It's after, after we opened it, of course.
Q. Let me take you back a second. When you first found the Tide box, what was the condition?
A. Like I say, had a lot of clear tape around the box.
Q. Where was that tape consistent with its original packaging or was that extra?
A. No, sir. It was extra.
Q. And in this photo, can you still see some of that tape?

A. No, not really.
Q. How was the box opened?
A. We used a multitool, which we call it a gerber, like it has a knife. My partner cut it open. He had to do a lot of cutting to go through the tape.
Q. Prior to the point that you opened up the Tide box, had the defendant said anything during the course of your search?
A. No, sir.
Q. What did the defendant do after you opened the Tide box?
A. After he noted that, we opened the package, he kept saying, talk to Jeff, talk to Jeff, talk to Jeff.
Q. Who was the defendant talking to?
A. To us.
Q. In what language was he speaking?
A. In English.
Q. After the box was found, was the defendant taken off the ship?
A. Yes.
Q. How was he taken off the ship?
A. He was escorted off by Agent Qunquilla and myself.
Q. While you were walking him off the ship, what was the defendant doing?
A. He was talking to other workers in the yard in Creole. All I could understand was "Jeff, Jeff, Jeff," and the other workers were pointing different directions.

Q. Let me just stop you for a second to be clear. So, during the time you were walking the defendant off the ship, the defendant was speaking in Creole to who?
A. To the other workers that were in the yard, like the stevedores, the ones that load up the vessels.
Q. And in reaction to what the defendant was saying, what were the stevedores doing?
A. They were pointing, pointing different directions.
Q. Do you speak any Creole?
A. No, sir.
Q. But it sounds like you were able to make out something in the words of the defendant.
A. All I understood was "Jeff, Jeff."
THE COURT: Let him finish, please.
BY MR. JUMAN:
Q. Was the defendant saying anything else to you or to Agent Qunquilla at this time?
A. Yeah. When we kept walking, he was saying, talk to Jeff, talk to Jeff. That's all he said, talk to Jeff.
MR. JUMAN: Can I have a moment, Your Honor?
BY MR. JUMAN:
Q. Officer, just a couple follow-up questions.
First, with respect to Government Exhibit 2, that picture of the Tide box, is that a fair and accurate reflection of how the box looked that day?

A. Not really.
Q. Before it was opened. Sorry.
Is that a fair and accurate reflection of how it looked after it was opened?
A. Oh, yes.
MR. JUMAN: Your Honor, the Government offers Exhibit 2 into evidence.
MR. ARTEAGA-GOMEZ: No objection.
THE COURT: 2 will be admitted.
(Government's Exhibit 2 in evidence)
BY MR. JUMAN:
Q. Officer, before the box was opened, can you describe how much of the area of the box was covered with tape?
A. The whole top part.
Q. Was there anything unusual about that to you?
A. Yeah. It had an amount -- it had an excessive amount of tape.
Q. If that box had contained detergent, would that detergent have been accessible given the amount of tape on the box?
MR. ARTEAGA-GOMEZ: Objection. Calls for speculation.
THE COURT: Rephrase your question.
BY MR. JUMAN:
Q. Officer, did the Tide box appear to be one that opened and shut on its own?

A. No.
Q. Let me withdraw that.
Did the Tide box have any visible openings in it?
A. No.
Q. Let me ask you to go back a second.
You described your general procedure in connection with an inspection of a ship as taking the crew and putting them, in this case it was in the back of the boat, right?
A. Right.
Q. Can you just explain for the Court why you do that as part of an inspection?
A. Well, for one reason, we do it for our safety. That's the most important thing for us, our safety. And number two is, once we search an area, we don't want them to be walking around. Maybe they can tamper with evidence. And also, we don't want them to see, because we utilize technology, we don't want them to see the tools that we use.
Q. And when you say tools, you mean tools in connection with the inspection?
A. Correct.
Q. Is there anything that you do in connection with the crew that's not related to the inspection?
A. I don't understand your question.
Q. Do you ever ask them questions that aren't related to the inspection?

A. No.
Q. Do you put them in a part of the ship for reasons having nothing to do with the inspection?
A. No. Like I said, we just want to like -- you want to be able to account for everyone that's on the boat, and like I said, not to be wandering while we do our inspection, not to mess with us. Like I said, safety is the number one reason for us.
Q. Once the inspection is over, what happens to the crew?
A. They're free to go.
MR. JUMAN: One second, Your Honor.
Nothing further, Your Honor.

CROSS-EXAMINATION

BY MR. ARTEAGA-GOMEZ:
Q. Hi, sir. Good afternoon.
A. Good afternoon.
Q. Mr. Juman asked you questions about prior occasions where you've interacted with Mr. Youte. Do you recall those questions? Do you remember those questions he was asking you?
A. Yes. Yes.
Q. Okay. And you said is that you've interacted with Mr. Youte, or you've inspected ships where you saw Mr. Youte on the ship three or four times.
A. Yeah.
Q. When were those three or four prior occasions?

A. It's been a while. I know on one of the boats. I remember the name. I just don't know what -- I don't keep track of the time.
Q. Were they all like over the past 10 years, 20 years, one year? Can you give us a sense of the time frame where --
A. Oh --
Q. I'm sorry. Let me just finish the question and you can answer.
Can you give us just a sense of the time frame of when those three or four prior inspections occurred?
A. I think it was in the past, it was like in the past ten years, yes, I've seen him.
Q. Over the past ten years?
A. I've been with Customs for 12 years. So I've been working the river for the past 12 years. So I've seen him around a few times.
Q. So those three or four occasions that you mentioned on direct examination, as far as you remember, those are spread across the approximately last 12 years?
A. Correct.
Q. They're not concentrated in the year immediately preceding February 27, 2017?
A. Right. Correct.
Q. What were the names of the vessels?
A. I just remember one. One was called the MINUSH. I can't

remember the names of the other ones.
Q. And when was that?
A. I think about maybe six years, seven years ago, the MINUSH. I don't remember the name of the other boats.
Q. You don't remember the names of the others?
A. No.
Q. Okay. And on those prior occasions where you interacted with Mr. Youte during an inspection, what do you recall about the conversations you had with him or the questions you asked him and the answers he gave you?
A. No, not that I had interaction with him. Just like I said, we followed our known protocol. He was coming from Haiti, so we do our normal questions. We got every crew member, we take them to the room, ask them questions: How long were you in Haiti for; what did you do; did you leave the boat, normal questions, like is there any contraband that you know in the boat. That wasn't interaction but just questions that we asked.
Q. So in those three or four prior occasions where you've questioned Mr. Youte, they were typical Customs border inspection questions?
A. Correct.
Q. And on those prior occasions, did you ever have an experience where Mr. Youte appeared to be in possession of any kind of contraband?

A. No.
Q. And by "contraband," you understand that includes over $10,000 in U.S. currency?
A. We usually ask that question when they're coming inbound. We usually ask for -- we usually check for narcotics when it's an inbound and outbound inspection. When we're in the seaport, we don't ask that when they're coming in from Haiti. We don't ask them if they're carrying over $10,000. We don't ask that.
Q. You don't usually ask that when?
A. When they're coming inbound.
Q. Okay. What about outbound?
A. Outbound, yes.
Q. And is there a form associated with that?
A. Yes, there's a form.
Q. For outbound traffic?
A. Yes.
Q. And are you familiar with a form like that being utilized in this instance?
A. No. We didn't have the forms available that day, no.
Q. On this date you just didn't?
A. No, we didn't. But we just got a verbal. A verbal contemplates the same thing as the form.
Q. So in those three or four prior occasions you don't recall Mr. Youte being in possession of large amounts of U.S.

currency or over $10,000 in U.S. currency?
A. No.
MR. ARTEAGA-GOMEZ: No further questions, Judge. Thank you.
THE COURT: Any further questions?
MR. JUMAN: One second, Your Honor.

REDIRECT EXAMINATION

BY MR. JUMAN:
Q. Officer, you've just testified that when you're doing an inbound Customs question you ask about narcotics but not money. You ask about money going outbound.
A. Yes.
Q. Why is that?
A. Because like I said, we don't usually focus -- the typical inspection, like I say, we don't -- like when they're coming in, we don't worry about that. We worry about narcotics coming in.
Q. Let me try it this way. Why is it that you're worried about narcotics coming in but money going out?
A. It's not that we worry, that we don't worry. Mostly, basically, most of the guys, when they come in, they don't have the means and funds, I guess, to have that kind of money coming in from Haiti.
Q. But why is it that you believe they might going out?
A. Because we know that there's a lot of trafficking coming

in from Haiti, a lot of narcotics coming in from Haiti, so, of course, they got to be going out.
MR. JUMAN: Nothing further.
THE COURT: Thank you, Officer. You may step down.
(Witness excused)
THE COURT: Let's take ten minutes. We'll come back. Who's your next witness?
MR. JUMAN: We usually had an inquiry for Your Honor. But our next witness ordinarily would be Special Agent Jacque Philippe.
If Your Honor is interested in the reasonable suspicion standard which has been advocated by the defendant, we could call Special Agent Qunquilla to discuss briefly the nature of the confidential informant's information.
Again, our position is it's not relevant and we'd prefer to just proceed with Special Agent Jacque Philippe to discuss the Miranda.
THE COURT: I'll let you decide, because, obviously, if I find that there was reasonable suspicion, that moots the issue he's raising. I'll let you decide. If you want, I won't stop you from putting that evidence on to bolster your record. You have an Eleventh Circuit case on your side.
MR. JUMAN: I appreciate that.
THE COURT: So, I think to some extent, it's fine with me if you go with the Eleventh Circuit case. But I have

no problem if you say, well, in light of the argument they're making to bolster your position -- I think it's your call more than mine.

MR. JUMAN: Thank you, Your Honor.

THE COURT: I have the afternoon.

MR. JUMAN: I'll consult with my colleagues here and then we'll advise at the end of the break, if that's okay.

THE COURT: Okay. We'll come back in ten minutes.

(Recessed at 2:48 p.m.)

(Resumed at 2:55 p.m.)

MR. JUMAN: Your Honor, the Government calls Special Agent Jacque Philippe.

THE COURTROOM DEPUTY: Please raise your right hand.

JACQUE PHILIPPE, GOVERNMENT WITNESS, SWORN

THE COURTROOM DEPUTY: Please have a seat, sir, and state and spell your name for the record.

THE WITNESS: My name is Jacque Philippe, spelled J-a-c-q-u-e. Last name is Philippe spelled P-h-i-l-i-p-p-e.

THE COURTROOM DEPUTY: And your agency, sir.

THE WITNESS: I'm currently employed with Homeland Security Investigations.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. JUMAN:

Q. Agent Philippe, how long have you been with Homeland

Security?

A. I've been with Homeland Security for about six and a half years now.

Q. What's your position there?

A. I am a special agent.

Q. What your, generally speaking, your job duties?

A. My job duties include conducting criminal investigations.

Q. What languages do you speak?

A. I speak Creole and English.

Q. How long have you spoken Creole?

A. I've spoken Creole my whole life.

Q. Where did you learn Creole?

A. My parents.

Q. Let me direct your attention to February 27, 2017. What was your assignment that day?

A. I was contacted to assist the HSI Miami office in conducting a few interviews.

Q. Just to be clear, did you in any way participate in the search of the DORIS T that day?

A. No, sir.

Q. On February 27th, did you interview the defendant that day?

A. Yes, sir.

Q. Do you recognize him here in the courtroom?

A. Yes, sir.

Q. Okay. How many interviews did you do of the defendant that day?
A. I conducted two interviews of the defendant that day.
Q. Where did those interviews take place?
A. Those interviews took place at the HSI Miami office in an interview room.
Q. Approximately what time of day was the first interview?
A. The first interview was conducted early afternoon.
Q. And who else was present?
A. The first interview was Agent Victor.
Q. Victor Lopez?
A. Yes, sir, Victor Lopez.
Q. Okay. What language did you use when speaking with the defendant?
A. I was speaking to the defendant in Creole.
Q. Why did you speak to him in Creole?
A. Because the defendant stated that he understood and spoke Creole.
Q. How did you begin the interview?
A. We began the interview by stating the time and date and the defendant's name that we were going to interview, and then the interview -- then we went into reading the defendant his Miranda rights.
Q. How many similar interviews have you conducted over your time at HSI?

A. Hundreds of interviews.
Q. And what's your practice when you begin those interviews?
A. I read them their rights and have them initial each line stating that they understand what I just read to them.
Q. How did your reading of the Miranda rights with Mr. Youte differ from any of your previous interviews?
A. When I read him his Miranda rights, I followed my regular procedure, read the first line. He stated that he understood what I just read to him.

Then I requested that he initial the first line that I read to him saying that he understood, and the defendant stated that he didn't know how to write. So I proceeded to translate the whole statement.

Then afterwards the defendant initialed each line saying that he understood what I read to him, and then he signed the Miranda form and stating that he was willing to talk to the agents.

Q. Did the defendant actually sign it with his handwriting?
A. No. He didn't know how to sign. So what he did was he made like a T sign stating as his signature.

MR. JUMAN: Your Honor, may I approach?

BY MR. JUMAN:
Q. Agent, I'm showing you what's been previously marked as Government Exhibit 1. Do you recognize it?
A. Yes, sir.

Q. What is it?
A. It is the English HSI Miranda rights form.
Q. In the top right corner there's some handwriting. Do you know whose handwriting that is?
A. That was Agent Victor Lopez's handwriting.
Q. On the left side of the document there are some T's next to the English typed words. Who made those T's?
A. Those T's were the defendant.
Q. Did you witness the defendant making those T's?
A. Yes, sir.
Q. In the bottom half, under where it says waiver, who filled out the times?
A. Agent Victor Lopez.
Q. And under that where it says print name and signature, who put the marks on those lines?
A. The defendant, Youte.

MR. JUMAN: Your Honor, at this time the Government offers Exhibit 1.

MS. LOMAX: No objection.

THE COURT: 1 will be admitted.

(Government's Exhibit 1 in evidence)

BY MR. JUMAN:
Q. Agent, while you were reading the defendant his Miranda rights, did he at any time express any confusion about what you were saying?

A. I was translating the Miranda rights from English to Creole for the defendant, and, no, he did not express any confusion.
Q. Did he express any inability to understand what you were saying?
A. No. I asked him multiple times during the whole process in the interview does he understand, and the defendant stated, yes, he understood.
Q. How did the defendant respond at the end after you'd finished reading him his Miranda rights?
A. The defendant agreed to speak with the agents, talk with the agents, and the defendant -- well, he made the mark on the lines on the form, the Miranda rights form.
Q. Was the interview recorded?
A. Yes, sir, the interview was recorded.
Q. I'm going to show you what's been previously marked as Exhibit 3.

Do you recognize Exhibit 3?

A. Yes, sir.
Q. How do you recognize it?
A. It's the recording from the first interview and my initials on it and the date.
Q. Agent, was a transcript prepared of this interview?
A. Yes, sir. A transcript was prepared for the first, I believe, seven minutes of the interview.

Q. Let me show you what's been previously marked as Exhibit 3-A and ask you if you recognize that.
A. Yes, sir. I recognize Exhibit 3-A.
Q. What is Exhibit 3-A?
A. 3-A is the translation of a portion of the interview that was conducted of the defendant.
Q. Have you reviewed the transcript?
A. Yes, sir.
Q. Does it accurately reflect the conversation you had with the defendant regarding his Miranda rights that day?
A. For the most part, yes, sir, it reflects.
MR. JUMAN: At this time, Your Honor, the Government offers Exhibits 3 and 3-A.
MS. LOMAX: No objection.
THE COURT: 3 and 3-A will be admitted.
(Government's Exhibits 3 and 3-A in evidence)
BY MR. JUMAN:
Q. Agent, I want to direct your attention to page 7 of Exhibit 3-A. Can you please turn there?
A. Yes, sir.
Q. I'm going to actually -- so I can direct your attention better, I'm going to attempt -- there we go.
I'm going to direct your attention to the portion of the transcript that I've circled here. Do you see that portion there?

A. Yes, sir.
Q. Can you tell us what is the English translation of those two sentences, according to the transcript?
A. "You have the right to contact an attorney before you make any statements" -- "before you give us any statements."
Q. Okay. And do you see in those two sentences the word "avan," a-v-a-n?
A. Yes, sir.
Q. What does that word mean in Creole?
A. "Before."
Q. Have you reviewed this transcript in connection with the video of the interview?
A. Yes, sir.
Q. Have you confirmed that the word you used at this point was "avan"?
A. Yes, sir.
Q. And let me put up Exhibit 1.
At this point during your reading of the Miranda rights, what sentence of this form were you translating?
Hold on. Let me zoom in a second there. That's too much. Hold on. That's terrible.
MR. JUMAN: Excuse me, Your Honor. I apologize.
BY MR. JUMAN:
Q. Okay. Which sentences on this form were you translating in that portion of the transcript that we just looked at?

A. Line number 4.
Q. And I'm just going to circle that here.
That's the part that reads "You have the right to consult an attorney before making any statement or answering any questions"?
A. That's correct, sir.
MR. JUMAN: One second, Your Honor.
BY MR. JUMAN:
Q. Just a few more questions about the transcript.
Agent, are there some words that are the same in Creole as in English?
A. Yes, sir.
Q. What's an example of that?
A. An example of that would be like "translate" and "court."
Q. Now, were there times during the interview that you used English words instead of Creole?
A. Yes, sir.
Q. I'm going to direct your attention again to page 7 of the transcript and I'm just going to point out at the beginning of the paragraph attributed to you the word --
THE INTERPRETER: I'm sorry. The interpreter is losing you if you don't have a microphone.
THE COURT: We have a handheld.
MR. JUMAN: I can do it. That's okay, Your Honor.
BY MR. JUMAN:

Q. Direct your attention to the paragraph that begins on page 7 and there are two words at the top line, "then" and "just," that are in italics.
A. Yes, sir.
Q. Those were in English, correct?
A. That's correct, sir.
Q. Were there occasions when the defendant himself spoke in English during the interview?
A. Yes, sir.
Q. Let me ask you to turn to page 5 of the transcript. Let me direct your attention to the answer that is towards the bottom of what's now projected on the screen. The question is, "Do you understand what I've just said?"
What the defendant's response?
A. The defendant stated "Yes."
Q. And in what language was he speaking?
A. That was in English.
Q. During this interview, when either you or the defendant used English, did the defendant express any confusion or lack of understanding?
A. No, sir.
MR. JUMAN: At this time, Your Honor, the Government would like to play the beginning portion of the interview where the Miranda rights were given.
(Video recording played)

MR. JUMAN: Let me just stop there for a second.

BY MR. JUMAN:

Q. Agent, we just came back to that portion on page 7 we were talking about.

What is the Creole word for "after"?

A. "Aprie."

Q. And the Creole word for "before"?

A. "Avan."

Q. And which word did you use at this portion of the transcript?

THE REPORTER: Excuse me. I can't write the Creole.

MR. JUMAN: Sorry.

BY MR. JUMAN:

Q. Can you spell the word for -- let's try it this way. The Creole word for "before" is what?

A. "Avan."

Q. And how do you spell that?

A. A-v-a-n.

Q. Okay. And what's the Creole word for "after"?

A. "Aprie."

Q. And how would you spell that?

A. A-p-r-i-e.

Q. And in the portion that we just listened to, which word did you use?

A. I said "avan."

Q. And spell that for the court reporter.

A. A-v-a-n.

Q. All right. Continue playing.

(Video recording played)

MR. JUMAN: Okay. Stop there.

BY MR. JUMAN:

Q. Agent, one more question about the tape we just watched. If you can take a look at Exhibit 1 again and direct your attention to the second-to-last line of the statement of rights.

A. Yes, sir.

Q. I can just pull that up. One second. There we go.

There it says, "If you cannot afford an attorney, one will be appointed for you before any questioning, if you wish."

A. Yes, sir.

Q. Do you see that?

A. Yes, sir.

Q. How did you translate the words "if you wish" when you were speaking with the defendant?

A. Let me double-check.

I translated it "if you need one."

Q. Agent, you said that there were two interviews that day.

Approximately how much time passed between the first interview and the second interview?

A. It was a few hours.
Q. How did you begin the second interview?
A. I began the second interview by the same thing, stated the location, stated who was the agents that were at the location we were at, the time and a day, and who was in the room with us.
Q. Let me just stop you.
Who was in the room with you for the second interview?
A. Special Agent Qunquilla.
Q. All right. And what did you do after you --
A. And I presented the defendant with his Miranda rights form and just explained to him that the form still is in effect.
Q. When you referred to the form, is that Exhibit 1 that we've just been looking at?
A. That's correct, sir.
Q. In what language were you speaking to the defendant?
A. I spoke to him in Creole.
Q. Did the defendant express any confusion about what you were saying?
A. No, sir.
Q. Did he express any confusion as to what Exhibit 1 was when you showed it to him?
A. No, sir.
Q. How did the defendant respond after you reminded him about

Exhibit 1 and his Miranda rights?
A. To my knowledge -- I don't have the transcripts in front of me.
Q. No, no, I don't mean verbally.
A. Oh, he agreed to talk to us.
Q. Was that interview recorded?
A. Yes, sir.
Q. All right. Let me show you what's been marked as Exhibit 4.
Do you recognize Exhibit 4?
A. Yes, sir.
Q. What is it?
A. It's the recording for interview number 2 with the defendant.
Q. How do you recognize it?
A. My initials on it and the date.
Q. And was the beginning portion of this discussion transcribed?
A. Yes, sir.
Q. Let me show you what's been marked as Exhibit 4-A.
Do you recognize that?
A. Yes, sir.
Q. What is it?
A. It's a transcription of the second interview with the defendant.

Q. Is it the entire interview or just the beginning portion?
A. Just the beginning portion, the first minute and ten seconds.
Q. If you can take a look at page 2 of the transcript.
A. Yes, sir.
Q. Towards the bottom.
A. Yes.
Q. Hold on a second.
Towards the bottom, agent, there's an interchange that begins with "Okay." Do you see that?
A. Yes.
Q. Sorry.
A. On the second page or --
Q. On the second page, towards the bottom. "Okay. Do you remember when we took this paper?"
Do you see that?
A. Yes, sir.
Q. What paper were you referring to there?
A. The Miranda rights form.
Q. Now, do you see in the original language portion there's a word that's spelled, "pran," p-r-a-n? Do you see that?
A. Yes, sir.
Q. Having reviewed the video, do you agree with that transcription of what you were saying?
A. No, sir.

Q. What did it should be?
A. "Plin."
Q. Can you spell that, please?
A. I believe it's spelled p-l-i-n.
Q. And what does that mean in Creole?
A. To fill, like he filled out this paper, the form we were discussing at the time.
Q. Apart from that change, does Exhibit 4-A accurately reflect that part of the discussion you had with the defendant?
A. I believe so, sir.
MR. JUMAN: At this time, Your Honor, the Government offers Exhibits 4 and 4-A.
MS. LOMAX: No objection.
THE COURT: 4 and 4-A will be admitted.
(Government's Exhibits 4 and 4-A in evidence)
BY MR. JUMAN:
Q. Agent, at any point during these interviews, were there occasions when you were going to translate a question but you weren't able to translate it fast enough for the defendant?
A. That's correct, sir.
Q. Okay. Let me play as part of Exhibit 4 time code 2:16. It's at 3:04.
(Video recording played)
MR. JUMAN: Let me start that over again. Excuse

me. Okay.

(Video recording played)

MR. JUMAN: I'm sorry, Your Honor. Apparently the video is not working as I thought. Let me try that again.

There we go. Sorry about that.

MS. LOMAX: We're trying to verify the time stamp.

MR. JUMAN: Where we're going to go back, it should be 2:16.

(Video recording played)

BY MR. JUMAN:

Q. Agent, was that an example of what you were just describing of the defendant answering questions before your translation?

A. Yes, sir.

MR. JUMAN: One second, Your Honor.

BY MR. JUMAN:

Q. Agent, were you armed during this interview?

A. Yes, sir.

Q. Did you display your gun at any time?

A. No, sir.

Q. Was the defendant cuffed in any way?

A. No, sir.

Q. As you can see from the video, I guess.

A. Yes. His hands are folded.

Q. Did you threaten him at any point during the interview?

A. No, sir.

Q. Did you raise your voice at any time?

A. No, sir.

MR. JUMAN: That's all I have, Your Honor. Thank you.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MS. LOMAX:

Q. Good afternoon, Agent Philippe.

A. Good afternoon.

Q. Where were you born?

A. I was born here in Fort Lauderdale, Florida.

Q. And what was your first language?

A. Creole was spoken in my house.

Q. I'm assuming both your parents speak Creole.

A. Yes, ma'am.

Q. Did you receive any formal training in the Creole language?

A. No, ma'am.

Q. Have you ever studied Creole in school?

A. No, ma'am.

Q. Have you ever been hired to translate for a court?

A. No, ma'am.

Q. Have you ever been hired to work or serve as an interpreter other than these kinds of interviews at HSI?

A. No, ma'am.
Q. You testified that some words in Creole are the same as they are in English, is that correct?
A. That's correct, ma'am.
Q. And examples you gave were the word "translate," correct?
A. Yes, ma'am.
Q. And the word "court."
A. Yes, ma'am.
Q. How do you say "last name" in Creole?
A. How I would say it, I would translate it as (speaking Creole), which would be the last name how it is from English to Creole.
Q. And how would you say "apply" in control?
A. How would I say what?
Q. "Apply.".
A. I don't know how to translate "apply" in Creole.
Q. And how do you say the word "use" in Creole?
A. That exact word, it all depends on the context.
MS. LOMAX: Okay. No further questions.
MR. JUMAN: Nothing further, Your Honor.
THE COURT: Thank you very much, agent. You may step down.
THE WITNESS: Thank you.
(Witness excused)
MR. JUMAN: Your Honor, at this time the Government

has no further witnesses.
THE COURT: Very well.
MS. LOMAX: Your Honor, the defense calls Dimitri Hilton to the stand.

DIMITRI HILTON, DEFENSE WITNESS, SWORN

THE WITNESS: My name is Dimitri Hilton, D-i-m-i-t-r-i, H-i-l-t-o-n.

DIRECT EXAMINATION

BY LOMAX:
Q. Good afternoon, sir.
A. Good afternoon.
Q. Can you please tell us your educational background?
A. I started here in junior high school, went to high school in Brooklyn, New York. Subsequently I went to Columbia University, got a degree in chemistry and one in chemical engineering. Following that, after I had my Master's in engineering, in sanitary engineering, when I came to Florida, I applied at FIU and got a Master's in linguistics.
Q. In your studying at FIU with your Master's in linguistics, can you tell us if you had any specialty in terms of languages?
A. Yes. A lot of my courses, my cocourses were in syntax, and I studied Creole linguistics there.
Q. What kind of training or what did this training in Creole entail?

A. It entails writing and publishing, which I did in 1997 and 2000.
Q. And what was your publishing related to?
A. It was related to the pronouns, the recognition of the pronouns in Haitian-Creole.
Q. What your personal experience? Where were you born?
A. I was born in Haiti. I grew up there till I was 12, traveled to the United States. And my brothers and my sisters were already there, so I stayed with my family, grew up there, grew up in Brooklyn.
Q. What is your native language?
A. My native language is Haitian-Creole.
Q. And do you still have family that is currently in Haiti?
A. I do have family there, relatives there.
Q. And in the United States have you ever been involved in the Haitian community here?
A. During my time in New York I was heavily involved in the Haitian community.
Q. And what about travel to and from Haiti?
A. I did that very frequently, beginning in 1986 and up until now.
Q. Where do you work now, sir?
A. Presently I work for Creole Trans. I have worked for them for seven years, on and off, and I do translation and interpretation.

Q. Have you reviewed any evidence in this case?
A. Yes. I did review the transcript that was submitted to the defendant.
Q. Okay. So you reviewed a transcript.
Was there anything else that you reviewed in this case?
A. I reviewed the tape that was submitted to the defender.
MS. LOMAX: May I approach, Your Honor?
THE COURT: You may.
MS. LOMAX: I'm handing up defense 1 for identification.
BY MS. LOMAX:
Q. I have handed up to you Defense Exhibit 1. Do you recognize that document?
A. I have seen it.
Q. I'm sorry? I didn't hear you.
A. Yes, I have it.
Q. And how do you recognize that document?
A. I recognize it because it seems that the office of the defender gave me a copy of it.
Q. Is it in the same condition as when we sent it to you to review?
A. There have been some changes, yes.
Q. And the changes that you're speaking of, I believe the portions highlighted in yellow --

A. Yes.
Q. -- what do you know about those changes? Without going into what they are one by one, but the nature of them in general, are they familiar to you?
A. They are familiar to me because they seem to be italicized English words that I recognize.
Q. Okay. Did you work with Mr. Youte's lawyer, myself and Mr. Arteaga-Gomez on those edits?
A. Yes, I did.
MS. LOMAX: At this time I move Defendant's Exhibit 1 into evidence.
MR. JUMAN: No objection, Your Honor.
THE COURT: Defense 1 is admitted.
(Defendant's Exhibit 1 in evidence)
BY MS. LOMAX:
Q. So you reviewed the transcripts in this case as well as the actual video of Mr. Youte's interview, is that correct?
A. That's correct.
Q. How many times did you review the video?
A. I reviewed it at least twice.
Q. And were you able to hear Mr. Youte speaking on the video?
A. Yes. I heard him very well.
Q. And were you able to hear Agent Philippe speaking on the video?
A. Yes, I did as well.

Q. In what language were they speaking to each other?
A. Mr. Youte spoke in a native Haitian-Creole manner.
Q. And what language did Agent Philippe speak in?
A. Agent Philippe was speaking in a Creole that was somewhat a second-generation type of a Creole speaker.
Q. Okay. Were you able to form an opinion about the proficiency of the speakers in Haitian-Creole?
A. Yes.
Q. And can you tell the Court your opinion about the proficiency of Agent Philippe in Haitian-Creole?
A. I would have to --
MR. JUMAN: Your Honor, we to object to the question. The defendant has not been qualified as an expert nor offered as an expert. Opinion testimony would be outside the scope of a fact witness.
MS. LOMAX: Your Honor, I believe that I have laid the foundation for it. So at this time I'll ask that he be accepted as an expert in the language of Haitian-Creole based on his education and training.
THE COURT: Why could he not opine on that?
MR. JUMAN: Well, Your Honor, if he was being offered as an expert, presumably we would have gotten notice. We would have gotten a CV. We would have been able to prepare. But this is late to spring an expert on us.
THE COURT: Well, for purposes of a suppression

hearing, if you wanted to reconvene the hearing to get a rebuttal expert, I certainly would give you that opportunity. But I'm going to allow the testimony to come in subject to later challenge if you want to rebut it.

MR. JUMAN: Your Honor, would we have the ability to bring him back for cross-examination, not just for rebuttal?

THE COURT: Well, it's a suppression hearing. You can cross-examine him now, right?

MR. JUMAN: We can. But we wouldn't have the foundation to do it properly if we learn something, if we got sort of subsequent information about his qualifications that we would want to --

THE COURT: I see. Well, if we get to that point, you know, I can revisit that if you decide to do that.

MR. JUMAN: Thank you. We just want to preserve that.

THE COURT: Sure.

MR. ARTEAGA-GOMEZ: Your Honor, I do want to make a comment just so the record is clear. The defendant never invoked expert discovery in the case. So our reading of the rule is that we don't invoke expert discovery or demand expert disclosure from the Government. We have no duty to give prehearing or pretrial notice of an expert witness.

THE COURT: I don't know one way or the other. But I'll table the discussion.

MR. JUMAN: Your Honor, just one last point on that. The scope of the hearing was determined by the pleadings. There was no argument in the defendant's papers that as a matter of expert opinion that the agent's Creole was somehow different from standard Creole. So that again is also being sprung on us at the last minute.

THE COURT: I hear you. I'll reserve on that if we need to get to it.

Go ahead, Mr. Lomax.

BY MS. LOMAX:

Q. Okay. Agent -- I'm sorry, not Agent. Mr. Hilton, can you please tell us your opinion about the proficiency of Agent Philippe?

A. Well, I would have to put it on a scale, and based on my analysis --

Q. Okay. Go ahead.

A. -- on a scale from 1 to 10, I would give him a 6.

Q. And I'm assuming, just to be clear, 10 is the highest and 1 is the lowest.

A. Yes.

Q. What is the basis of that conclusion?

A. Well, to me there are various things that he understated, long pauses, gasping (sic) for words. And you have the syntax, the sentence formations are very awkward in parts of the tape. And I see that there's a lack of vocabulary. Key

words are said in English instead of Creole. So this tells me that the agent has a poor proficiency level in Haitian-Creole.
Q. I want to talk to you about the vocabulary in particular.
A. Yes.
Q. You said that there are words that the agent says in English as opposed to in Creole.
A. Yes.
Q. Earlier we heard testimony that there are some words that are the same in English and in Creole.
A. Uh, I don't think so, because linguistics has underscored that many times through many others that we take the bulk of our vocabulary from the French language.
Q. Okay. I want to talk to you about the word "translate."
A. Yes.
Q. Is the word "translate" the same in Creole as it is in English?
A. Definitely not.
Q. What is the Creole word for "translate"? And can you spell it after you say it for the court interpreter?
A. Okay. I will tell it. It is "tradui," t-r-a-d-u-i.
Q. And as for the word "court," is the word "court" the same in Creole as it is in English?
A. Absolutely not.
Q. What is the correct word for "court" in Creole?
A. The word is "tribinal," t-r-i-b-i-n-a-l.

Q. Okay. And what is the Creole word for "apply"?
A. "Apply." You can use the French word "applique," but it does not pertain to all matters in Haitian-Creole.
Q. Okay. Do you have any other examples of the things you just talked about in terms of syntax, grammar and --
A. Well, let's look at this very clearly. Not only translate, but on page 4 of the exhibit that you just provided me, we have the word "micshaw" (phonetic). That's not Creole. That's pure English.
Q. On page 7 --
A. Yes.
Q. -- we see on the original language column, on the right side, about a third way through the page, you see the word "kot" spelled k-o-t.
A. Yes.
Q. What is that word in English?
A. That word in English, if you say "kot," k-o-t, without the accent, that means "coast."
Q. Say that over.
A. It means "coast," c-o-a-s-t.
Q. Okay.
A. Now, if you spell it with an accent, it means "rib" or, again, "coastline."
Q. Okay.
A. Now, I would like to draw your attention to page 6.

Q. Okay.
A. Let me read that portion, please.
The first letter in your first name and the first letter in your last name. The term "first name" and "last name" do not exist in Haitian-Creole. You have (speaking Creole), which is last name, and you have CNT (phonetic), which is last name. So the agent there was not really communicating at the same level that the defendant was communicating.
Q. Okay. I want to draw your attention to the video.
A. Yes.
Q. I'm going to go to 3:16.
MR. JUMAN: That's the second video that's up. Do you want the first one?
MS. LOMAX: Thank you.
BY MS. LOMAX:
Q. I'm going to ask you to listen and then I'm going to ask you to translate what it is that you hear.
(Video recording played)
First, let me ask you, did you understand that and did you follow where I was?
A. I followed.
Q. Okay. So there's a portion of the transcript on page 7 that we modified with you.
What is your opinion about whether the agent said

"before" or "after" when referring to the Miranda statements in the highlighted yellow portion of the page?
A. Based on my listening of the tape?
Q. Yes.
A. There was an instant where first the agent said "before," and next he said "after," based on my listening of the tape.
MR. ARTEAGA-GOMEZ: Okay. I have no further questions.
MR. JUMAN: Just one second, Your Honor.

CROSS-EXAMINATION

BY MR. JUMAN:
Q. Sir, good afternoon.
A. Good afternoon, sir.
Q. Can you tell us how much are you charging for your work today?
A. Actually the company is charging.
Q. Do you know how much they charge?
A. Vaguely, around a hundred dollars, I believe.
Q. I'm sorry. A hundred dollars you said?
A. Yes.
Q. Is that per hour?
A. Yes, sir.
Q. How much were you paid for the time you spent reviewing the transcripts and the video?
A. My boss decides that.

Q. Do you know how much your boss has been paid so far by the defense for your work in this case?
A. I'm not privy of that.
Q. Did you review both of the videos?
A. I did, sir.
Q. And did you review both of the transcripts?
A. There is only one transcript before me.
Q. I see. You only saw one transcript, is that right?
A. I only see one transcript before me.
Q. I understand that.

But aside from what's in front of you right now, during the course of the work you did for the defendant in this case, how many different transcripts did you see?
A. I think probably two at least.
Q. Okay. I believe you stated on direct examination that you worked with the attorneys to come up with the final version that we see today in court, right?
A. This final version, yes.
Q. Yes.

Whose decision was it to make the change in the transcript that you were just discussing with defense counsel between "before" and "after"?
A. The office of the defender, sir.
Q. Have you met with the defendant himself, Mr. Youte?
A. No, sir, I have not.

Q. Have you analyzed his ability to comprehend English?
A. I cannot give you such an assessment based on the data that I have.
Q. And since you haven't met him, you haven't done an analysis of his ability to understand what you described as second-generation Creole, right?
A. Again, what from my point of view I see, the Creole that I hear is what you call 90 percent proof credley (phonetic). You've heard of Spanglish. That's what I was hearing in Creole.
Q. And again, you haven't done any analysis of the defendant's ability to understand that kind of language, right?
A. I do not have -- I could not get into his head, nor did I speak to him.
Q. You said earlier that you did not believe that the agent was communicating at the same level as the defendant, is that right?
A. A lot of English words and he doesn't speak English from what I see, so I cannot say it's the same level.
Q. And some of those English words were the defendant's English words, right?
A. No. Most, 95 percent or 98 percent of those words were the agent's word. Defendant only used one, two Creole -- English words, "yes" and "just," which are very common in the

speech of people in Haiti today.
Q. It's very common for the people in the streets of Haiti today to use English words, is that right?
A. No, not English words. Those two.
Q. Those two English words. I see.
MR. JUMAN: One second, Your Honor.
BY MR. JUMAN:
Q. Sir, just wrapping up, you don't know the defendant's ability to speak English, correct?
A. I'm not able to testify on that because I do not have the data.
Q. And you don't know his ability to understand English even if he can't speak it.
A. I am not able to testify on that because I do not have the data.
Q. And your testimony regarding the word you heard on the video being "after" instead of "before," that's just based on what you heard on the video, right?
A. Yes. You can repeat the video and the same way it will come out.
Q. But that's not based on any of your training, any of your experience or any of your education. It's just based on what you heard when you listened to the video, right?
A. That's what he said.
MR. JUMAN: No further questions, Your Honor.

MS. LOMAX: One second, please, Your Honor.
No questions, Your Honor.
THE COURT: Thank you very much, sir. You can step down. Thank you for your appearance.
(Witness excused)
THE COURT: Any additional witnesses from the defendant?
MS. LOMAX: One second, please, Your Honor.
No further questions.
THE COURT: Okay. Any further witnesses from the plaintiff, Government?
MR. JUMAN: No, Your Honor.
THE COURT: All right. Then that concludes the evidentiary phase of the case subject to the Government's argument on some limitation.
For purposes of responding to the Government's objection to the expert, do you want to file subsequent to the hearing an affidavit from the translation that you're using? Because this is not a sworn translation, correct?
MR. JUMAN: Not at present, Your Honor, no.
THE COURT: Would it not make sense to have the Court -- and you can combine -- I mean, I understand what the last witness was saying is that based on what he heard, that's what his draft that was introduced as Defense 1 was what his understanding of what it was saying said.

Do you want to combine an affidavit from your translator and then respond to that issue?

MR. JUMAN: Well, Your Honor, at this point the dispute is not over what the translation is. I think it's what the original Creole was.

THE COURT: Correct.

MR. JUMAN: And I believe the answer to that is going to be what Agent Philippe said.

THE COURT: In other words, the issue is what was said. So then the question is what does the translator hear, right?

MR. JUMAN: We don't believe the translator would be in any better position than the jury. The video is available. We have the video in evidence. We have Agent Philippe --

THE COURT: Well, how was the Government's translation prepared?

MR. JUMAN: The Government's translation was prepared by a translator working for HSI. But it's an aid for the agent's testimony.

THE COURT: Okay.

MR. JUMAN: So, again, we're not talking about a dispute over what the right English word is for a Creole word. We're talking about a question of something that was said in Creole.

THE COURT: Correct. But the only person who would be able to tell me that is somebody who understands Creole, right? He just testified that he heard this was what was said, right? And so then do you wish to rebut that with your translator?

MR. JUMAN: Well, again, I think our rebuttal would be from the person who actually said the words, and by playing the tape --

THE COURT: But I've already heard from him.

MR. JUMAN: I understand, Your Honor.

THE COURT: If you don't want to put on any more evidence, it's fine with me. I'm just offering the opportunity. If you don't want it, that's fine with me.

So let me turn to counsel for the defendant and tell me what based upon the evidence that's presented what it is that I can do.

MR. ARTEAGA-GOMEZ: Your Honor, can I focus on the Miranda issue first?

THE COURT: Yeah. I would do that.

MR. ARTEAGA-GOMEZ: So, Your Honor, Defense Exhibit 1, just so it's a hundred percent clear, it's in color. It has yellow highlighting. The yellow highlighting is where the defense altered the Government's transcript.

THE COURT: Right. Focusing on page 7, that's the edition that your expert heard.

MR. ARTEAGA-GOMEZ: Right.

The other things we altered is when Agent Philippe said a word in English that was not translated into Creole and he indicated it as italics in the original language column, but we felt it was appropriate that when that word was in the English translation column that a strike-through should be put there, because given that Mr. Youte is not a native English speaker, then it's less clear that he understood the English word that was not translated into Creole.

THE COURT: Got it.

MR. ARTEAGA-GOMEZ: So in terms of the substance of the transcript, the only real substantive difference is the hearing of the word "before" by the Government and by us after in that section.

So, first, before we get to that problem, we identify three main problems with the advice of rights. The first -- and I laid this outside in the reply memo I filed this morning -- the first is in being advised of the consequence of waiving his right to silence and making a statement, translated into English, Agent Philippe told Mr. Youte in Creole, "Anything you tell us we can it in in court."

THE COURT: Where are you reading from? I'm sorry.

MR. ARTEAGA-GOMEZ: On page 7 of the transcript. I'm looking at Defense Exhibit 1.

THE COURT: Okay.

MR. ARTEAGA-GOMEZ: As to the advice of the consequence of waiving his right to silence, Agent Philippe told Mr. Youte, "Anything you tell us we can," and then he says the word "use" but in English, not in Creole, "it in in court."

So there is no moment where Agent Philippe tells Mr. Youte "Anything you say can be used against you in court."

We believe that, as a factual matter, Mr. Youte did not understand the word "use" because it was not stated in Creole, it was stated in English by Agent Philippe.

But even if the Court were to find against us on that factual issue --

THE COURT: I have no record to find that.

MR. ARTEAGA-GOMEZ: No. I don't think you do.

THE COURT: I don't have the record.

MR. ARTEAGA-GOMEZ: Okay. Well, you don't have a record to find that -- I think you have a record to find that the word "use" was not stated in Creole to Mr. Youte.

THE COURT: Right.

MR. ARTEAGA-GOMEZ: Both parties are in agreement that that word was not translated from English to Creole.

THE COURT: Right.

MR. ARTEAGA-GOMEZ: Okay. Now, I expect that they're going to say that because there is some evidence that Mr. Youte has responded with the words "yes" and "no" to

certain other questions, that he has some type of understanding of the English language, okay. We don't think there's sufficient evidence that he understands what the word "use" means when it was said in English to him.

But for the sake of argument, let's suppose that you are convinced he understood what the word "use" means, even though it was not in Creole, it was in English, there still isn't a comment to him that how things that he says would be used, how would they be used in court.

And in Miranda itself, in Moran, M-o-r-a-n, Fair v. Michael C, the Supreme Court says over and over and over again that the key to validly waiving Miranda is not just understanding, appreciating the right that you have but having full awareness of the consequence of abandoning it and the most obvious consequences, the consequence that would be used to incriminate you, to prosecute you and that is in the standard English language form used against you in court or other proceedings. They don't say "used against you in court or other proceedings."

The second problem in the advice is this issue about the statement "after you give us any statements."

THE INTERPRETER: Your Honor, we need to switch his headset, please.

THE COURT: Hold on.

(Pause)

THE INTERPRETER: We're all set.

THE COURT: Okay. Go ahead.

MR. ARTEAGA-GOMEZ: So that's the first deficiency.

The second one is in being advised that he has the right to the presence of counsel for the entirety of interrogation. So the next statement given to him is, "You have the right to contact an attorney before you make any statements. After you give us any statements, you have the right to have an attorney present with you while being questioned."

So as I read those sentences -- and, of course, my argument is I'm assuming that the Court were to accept our factual position that uses the word "after" and not "before" -- as I read those sentences, he's being advised that there are essentially two separate phases of the interview or interrogation. There is a statement phase and then there is a questioning phase.

And by telling him, "After you give us any statements, you have the right to have an attorney present with you while being questioned," Mr. Youte is being told that after he gives a statement about the incident, he will have the right to an attorney while we begin to question you. But during the period of the statement it is not being clearly told to him that he has a right to the presence of counsel when he gives the statement, and it's misleading because it

makes it appear as if the right to have the lawyer present during the questioning is conditioned on the giving of the statement in the first place.

We cited cases in our brief and in the reply from the Supreme Court, the Powell decision from 2010 from the Supreme Court, Prysock, and I think the other one is Diesenberg (phonetic). It's a long name.

But all of those cases together support the proposition that the Miranda advice cannot mislead the person into believing that the right to counsel is triggered after there's been a degree of police interrogation or questioning. The person has to understand that they have an unqualified right to counsel for the entirety of the interrogation, and clearly, the giving of the statement is part of the interrogation period.

The last thing that's problematic about the statement is in the next line where it says -- well, not the next line. It goes for a while. But midway through page 7, it states, "If you cannot pay an attorney yourself, they will get you one before. If you cannot get an attorney on your own, then they will appoint you one before if you need one."

And that is also problematic because of the last four words, "if you need one." It is telling him that, it is suggesting to him that appointment of counsel is conditioned on two things: Number one, indigency, if you cannot pay; and

two, a need for one.

It's being suggested that, separate and apart from qualifying financially for an appointed attorney, there needs to be some showing or some finding of a need for an attorney. I think that's especially problematic --

THE COURT: On that third one, though, is that reasonable in light of the context of how many times an attorney was mentioned? Is that a fair interpretation, even assuming the words were used, is that a fair interpretation given the context of how many times he's told about the right to have an attorney?

MR. ARTEAGA-GOMEZ: Well, I think --

THE COURT: Isn't that too narrow a read of that language?

MR. ARTEAGA-GOMEZ: Well, I think if you look at each one of these sentences -- no, I don't think it is too narrow of a read, because I think that if you look at each of these sentences, it's almost like the advice is sort of -- Agent Philippe is sort of moving in fits and starts and trying to communicate this right.

"If you cannot pay an attorney yourself," and then it just stops, "they will get you one before." And then he starts again, "If you cannot get an attorney on your own, then they will appoint you one before if you need one."

So it sounds like the first few sentences, he's

trying to communicate, and then finally, when he spits it out, he's saying they will get you one if you can't afford it if you need one.

And I think what happened, if I had to guess what happened, is that the Miranda waiver says "if you wish." "If you can't afford an attorney, you can have one, if you wish." And that term, "if you wish," was translated into, "if you need one."

THE COURT: Is that material?

MR. ARTEAGA-GOMEZ: Yes.

THE COURT: I agree with you that's what he was trying to do. Do you think that makes a material difference?

MR. ARTEAGA-GOMEZ: I do. I really do.

I think that the two best cases I found that come as close as I can find to this are the two decisions that we cited, Perez-Lopez and Botello, two Ninth Circuit decisions. In Botello, the defendant is advised, if you cannot afford an attorney, you will be appointed one who is libre. One who is libre could be given to you. Libre, l-i-b-r-e, this is in Spanish. "Libre" translated from Spanish to English is "available," "free" --

THE COURT: Free as opposed to no cost.

MR. ARTEAGA-GOMEZ: -- as opposed to no cost. In other words, the right word in that case would have been "gratis," g-r-a-t-i-s, at no cost. But instead, the agent

said, "libre," available.

And the Court said that was a deficient waiver, because the person, the defendant, was led to believe that the appointment of an attorney was conditioned not just on financial qualification but the availability of an attorney, and it turned on just that word.

And Perez-Lopez, the person is told, you have the right to solicit the court -- this was also an English-Spanish translation. And the meaning of "solicit" in Spanish is to petition or to request. And the Court there said the defendant was misled because it made it sound that his right to appointed counsel is based on financial need as well as some decision by a court as to whether they're going to give it to him.

THE COURT: On that last one, the Ninth Circuit struck that Miranda -- or granted the Miranda motion on that last case?

MR. ARTEAGA-GOMEZ: I think so. Am I wrong about that?

THE COURT: No, I don't know. I'm asking.

MR. ARTEAGA-GOMEZ: I think so, yes.

THE COURT: All right.

MR. ARTEAGA-GOMEZ: I'll double-check it. But, yes, that's my understanding, Judge.

THE COURT: Wow. Go ahead.

MR. ARTEAGA-GOMEZ: Look, it's not easy to find a case where it turns on one word like "need" versus "wish." But they're there, and so it makes a difference.

I know that there are cases that say that what's important is not that there's no talismanic requirement, that it doesn't have to carry it word for word.

THE COURT: Right. Don't those Ninth Circuit cases kind of fly in the face of that?

MR. ARTEAGA-GOMEZ: No. Those Ninth Circuit cases, they acknowledge that principle, that general principle.

But the countervailing principle is also that there are specific distinct pieces of advice that have to be given to the person. They have to be clear, and it is very important, like Miranda says, that the indigent has to know that he has an unqualified right to an attorney if he can't afford one.

Now, the Supreme Court has said that that doesn't mean that there has to be like a jailhouse defense lawyer waiting to just jump into Miranda interviews at any time. But the person has to understand that once they can financially qualify, that's the only hurdle to getting an appointed lawyer.

Had he said "if you wish," there would be no problem, because then it's just, well, if you're indigent and if you want it, if you want it, you can have a lawyer. Here it's

saying, if you're indigent and if you need it.

Who decides whether you need it? A judge would decide. The same thing in Perez, the solicit, the petition, it would be a court that would decide if you have a need for one. Perhaps it can mislead the person into believing that, perhaps, if the crime is relatively minor, if it wouldn't amount to a felony, you would not need a lawyer. And there could be an immediate consequence to the person being questioned in that situation, because if they think, well, if a judge later finds that I don't need the lawyer, well, then, my only option is I got to talk my way out of this now and I've got to begin speaking. And I think that is a potential adverse effect if the person doesn't understand that they have a right to an attorney provided that they financially qualify.

THE COURT: And on the Fourth Amendment issue.

MR. ARTEAGA-GOMEZ: On the Fourth Amendment issue, I understand Judge Carnes' decision. The decision does not completely touch on this situation because it was a routine border search situation. I believe it was a case involving the discovery of child pornography.

In that case there's no luggage; no property is destroyed. And Judge Carnes recognizes that there could be a higher level of suspicion required, some level of suspicion required, for highly intrusive searches.

THE COURT: He was talking about strip searches.

MR. ARTEAGA-GOMEZ: Yeah. He was talking about x-rays, body cavity searches, strip searches.

THE COURT: Anything that would invade a person's dignity, I think, is the language that was used, right?

MR. ARTEAGA-GOMEZ: Yes.

THE COURT: So in this context, though, isn't the process of forcibly opening a container part of every routine, or at least a lot of routine border searches? I mean, if this situation had occurred at Customs at MIA, same exact situation, no reasonable suspicion, right, and they see this uniquely wrapped box and they ask the person, will you open this, and the person says, I can't, and then they say, oh, well, we'll open it to see what's in there, is that not part of a routine border search? Do they need to get a warrant for that?

MR. ARTEAGA-GOMEZ: If they say "We're opening it" and the opening doesn't involve some --

THE COURT: No. They cut it. They did the same thing. They got a pair of scissors or a knife, or whatever they used here -- whatever they used, I assume they used a blade of some type -- and they cut the tape, opened the box, just like our case, and then they saw what was inside.

MR. ARTEAGA-GOMEZ: They don't need a warrant. But my position is they need reasonable suspicion to start cutting into the container.

THE COURT: Do you have authority for that? The act of cutting is what makes a difference? I guess what you're saying is, if all they had to do was open an unlocked box, right, and the Tide just had a flap and normally you could open it and look into it, no warrant required.

MR. ARTEAGA-GOMEZ: Or suspicion.

THE COURT: Or suspicion.

If, however, the Tide box was sealed in some way -- now, in this case it was sealed with tape. But let's say it was closed, it was sealed. Then, in order for them to inspect the contents, they'd have to break that seal. Now you need reasonable suspicion?

MR. ARTEAGA-GOMEZ: Yes. And in page 6 of our motion we cited United States versus Rivas. It's a Fifth Circuit decision from 1998 that involved the drilling into the frame of an auto body drilling of a trailer at the border, and they said reasonable suspicion is required for that.

THE COURT: When they're drilling, it's almost like they're conducting an analysis in respect to drilling into the truck as opposed to just looking into it. Right? The analogy would be that the back of the truck is locked and they ask the person, open the back of the truck, right. And the person doesn't speak English. He just freezes, doesn't open the back of the truck. So then the back of the truck has a seal on it that's taped shut, right? And then they open that using a

blade. Reasonable suspicion in that situation?

MR. ARTEAGA-GOMEZ: Yes. Because I think that --

THE COURT: Don't you think that would undermine the border search exception to a very, very large degree? Basically all you'd have to do to evade the purpose of a border search is just come up with a really good seal. Is that what you're saying?

Just, by the way, I digress. When my mother used to bring in all sorts of food -- the statute of limitations has run -- all sorts of food from Bolivia, right, she'd come back from Bolivia and she'd have three pieces of luggage all wrapped up with ham and Bolivian potatoes. And the way she would do it is she would just basically put so much tape and effort into it that when the Customs official looked at it and they ran a dog and the dog didn't hit for any narcotics, they would just let it go because they didn't want to deal with the hassle of opening up all this taped stuff that she had. And that's how she would come in loaded for bear with Bolivian food that was illegal to bring in. Right?

So, what you're saying is that she basically had created a situation where, if they wanted to open up her Bolivian ham, that would have required reasonable suspicion. Is that what you're saying? Because it was all taped up. It was all tape. So had they said to her, open this up; I can't open that up, that took me forever to pack it. And then they

took a blade and they cut into it.

You're saying, your argument would be, that is reasonable suspicion. Is that what you're saying?

MR. ARTEAGA-GOMEZ: Yes, I am saying that.

THE COURT: What's your best case for that other than Rivas?

MR. ARTEAGA-GOMEZ: It's the other two that we cited in the memo. Well, in Flores-Montano, the Supreme Court decision that recognized that a border search that involves, mentions destruction of property, could require reasonable suspicion.

I don't have a case now where it is merely the cutting open of a box like this with a pocketknife to get inside.

THE COURT: And isn't that ultimately different? And I guess your point is, well, this is destruction of property in a way is what your point is, right? But it's not really destruction of the property. It is opening it, and by opening it, that doesn't foreclose you from then being able to reclose it. When you inspect it, it's just a bunch of Tide, right? It's just a bunch of detergent.

There's nothing precluded in this situation, for example, from then closing it, resealing it. So, therefore, there's been no destruction of that property. They haven't taken that detergent and made it unusable based upon the

testing method that they were using, right?

Isn't that what the language that you're talking about really is addressing, where you're basically taking personal property and in the course of your examination had made it unusable now?

MR. ARTEAGA-GOMEZ: Well, I think, number one, I don't know. If you look at the Government exhibit or the photograph of that box, it looks essentially unusable at this point given how they tore into it.

THE COURT: Right.

MR. ARTEAGA-GOMEZ: But the problem with that line of reasoning is that then you are suggesting that there needs to be some sort of line that needs to be drawn. Where do you draw a line about the degree of destruction of the property or how much value must the property or the container have before the destruction of that container becomes a highly intrusive search.

And that's where I think the excerpt that I provided in the reply from the Ross decision from the Supreme Court, I think that comes into play because --

THE COURT: Remind me of the holding on that.

MR. ARTEAGA-GOMEZ: This is the case that deals with automobile searches and it's the case that held that probable cause to search for a piece of contraband in a vehicle includes any parts of the vehicle where that particular

contraband could be found.

THE COURT: Right.

MR. ARTEAGA-GOMEZ: It's not a destruction of property case. I understand that.

But there's language in that case that discusses that the Supreme Court has long rejected that privacy interest in closed containers as in homes doesn't depend on the degree of sophistication or strength of the container itself.

THE COURT: Does that have any application at the border, though? Because clearly, in a car situation, you know, the answer here might be different if this was a traditional automobile search. But at a border?

MR. ARTEAGA-GOMEZ: I think it creates a serious imbalance in the way that people are treated at the border.

THE COURT: I think we agree on that.

MR. ARTEAGA-GOMEZ: The crew member that is flying back to Haiti and has nothing but a cardboard Tide box to take back a few things home and taped to keep it together, that guy can be searched without any reasonable suspicion. But the Goldman Sachs representative that's going to Paris in his steel reinforced attache, he has a privacy interest.

THE COURT: Let me actually take that argument. The guy with the attache, right, and the Louis Vuitton bag, right, and he comes into the airport and it's locked, and the Customs official looks at it, suspects this seems weird, this seems

too heavy for the type of travel that this guy is doing. So it doesn't rise to reasonable suspicion for purposes of the Fourth Amendment. But there's something that bothers him about it and he wants to open the bag. The guy says, I don't have the key, I can't open it. Okay.

Does the officer in that situation at a border stop need reasonable suspicion to force open the bag?

MR. ARTEAGA-GOMEZ: Yes, and if it's going to involve the destruction of the bag. Now, if he's able to pick the lock and get it open and it doesn't --

THE COURT: It may require a new lock. But if he forces it open, do you think that requires reasonable suspicion? He forces it.

MR. ARTEAGA-GOMEZ: Well, if it involves breaking into it where you're causing destruction of the container itself, some kind of --

THE COURT: He's destroying the lock. The lock is going to have to be replaced. Yes. He's destroying the lock, because he doesn't have the key. He has one of these knives. He forces it open. Can he do that?

MR. ARTEAGA-GOMEZ: He needs reasonable suspicion to do it, and it may be given the --

THE COURT: Well, why would that be the standard, though? Do you see my point? Given the standard that both the Supreme Court and the Eleventh Circuit have made clear in

terms of the scope of a border search, and we all understand the policy for it, why would you then have a rule that any time some level of force is used to open a container, that equates to a reasonable suspicion requirement? That would completely undermine the purpose of the border search.

MR. ARTEAGA-GOMEZ: No. There's plenty of border searches that take place on a regular basis without any suspicion at all that don't involve destruction of property that are far more than just cursory searches. Reasonable suspicion is a low standard. It's lower than probable cause.

Perhaps in a situation where this individual at the airport is showing nervousness, he's showing a reluctance to cooperate, those things, in addition to other observations by the officers, may give them reasonable suspicion to break into it.

THE COURT: The bag is heavy. It's just unreasonably heavy. Your point is that they can't open it.

MR. ARTEAGA-GOMEZ: Well, you could say the same thing that, well, you know, if we think someone is carrying drugs in them, or that they've swallowed contraband, then we shouldn't have to require any kind of suspicion for that because it's the border.

The law still draws a line that there is a line to be drawn --

THE COURT: There is an element of personal dignity

involved when you're using a carrier.

MR. ARTEAGA-GOMEZ: Right.

THE COURT: But that's an exception to the exception. We don't have that here. Basically, the record in this case is forced entry of a closed container.

MR. ARTEAGA-GOMEZ: Forced entry of a closed container.

The Supreme Court must have meant something in its footnote in Flores-Montana when it said --

THE COURT: I'm pretty sure they didn't mean this. In other words, I'm pretty sure they didn't mean that any time you have a sealed container of some type, that that changes the Fourth Amendment equation, because, otherwise, then everybody could just seal their containers and then the border agent could not inspect them.

Because often you're not going to have reasonable suspicion in that case. You don't have any knowledge of the person. They're just one of the people coming into the airplane or out of the port, and often you're not going to have reasonable suspicion for Fourth Amendment analysis purposes.

But what you're saying is then you can't open their closed container. Just like my mother with her Bolivian ham, she adequately sealed it. So, therefore, without breaking that seal, they can't get into it. So, okay.

MR. ARTEAGA-GOMEZ: You can't destroy the property.

In this case, there is a destruction of the container.

THE COURT: But the destruction of the container was the destruction of the tape surrounding it.

MR. ARTEAGA-GOMEZ: And the sides of it. I mean, they did more than just destroy the tape around it. They cut into the box.

THE COURT: Right.

Let's say they had found nothing, just to take your point in terms of whether or not this is truly a destruction of property situation. Let's say they found nothing. It was just detergent. It was innocuous. It didn't have any contraband. It was perfectly appropriate.

What would the solution be? You'd reseal the box, right?

MR. ARTEAGA-GOMEZ: Yeah. And Mr. Youte would have a hard time finding a plaintiff's lawyer willing to take that civil rights case.

THE COURT: There would be no civil rights case so long as you reseal the box. If you can reseal the box, then he hasn't lost anything. The property that was inside the box wasn't destroyed. It was inspected. And then, if you can reseal it, in that situation do you have a case where you have a destruction of property?

MR. ARTEAGA-GOMEZ: Well, perhaps that's one situation where there's nothing. There's just detergent in it.

Another situation can be that a person has put sensitive medical records for their children in that box and they're trying to protect it from anybody seeing it.

THE COURT: Right.

MR. ARTEAGA-GOMEZ: And the exposure of that may cause them or their family embarrassment or problems that they were seeking to shield the public from.

THE COURT: But the public wouldn't have access to it. It would be the border agent.

MR. ARTEAGA-GOMEZ: Right. Well, law enforcement.

THE COURT: Again, assuming that the border agent then returns that to the person traveling, where is the Fourth Amendment violation?

MR. ARTEAGA-GOMEZ: It's in the fact that they destroyed their stuff. They broke into it. It cannot be used anymore. It is not in the state that it originally was in.

We're dealing with it now because there's $37,000 of cash in it. But the reason the rule exists is to protect the person that does have something sensitive in there that has no choice but to use a cardboard Tide box to carry something personal and private.

THE COURT: Let me ask this second question. The

Government chose to not necessarily focus on the reasonable suspicion other than at least as relates to anything that was known to them before this search occurred.

Based upon the record presented here, there are two things that the record shows. One is that upon inspection they asked him questions about whether or not he had anything on him or had any money on him, and he initially disclosed, I think, initially $2,000, as I recall, and then an additional $200, right, or additional monies. It was coming in fits and starts, to use your phrase. So that's one thing. The second thing is they then see the box. Okay.

The combination of those two things, would that not be reasonable suspicion?

MR. ARTEAGA-GOMEZ: No, because when they enter the room, there is no evidence that they have any reason to believe that there is cash being smuggled or any contraband in the room.

THE COURT: Right.

MR. ARTEAGA-GOMEZ: They're asking him questions about cash that he has. He's responding to the questions by pulling things out that are what they're asking for.

THE COURT: Right.

MR. ARTEAGA-GOMEZ: They move him out of the room, and when they are going for the Tide box, there's no evidence that he has some reaction to it before they break it open and

then they pull out the money and he says, Jeff, Jeff, Jeff. But at that point the invasion has already occurred.

THE COURT: Right.

MR. ARTEAGA-GOMEZ: My recollection of the testimony was that he goes out to the window. They put him in front of the window, so he sees in order to protect against any issues or claims of theft, and there's no testimony that he reacts in any suspicious way when they go for the Tide box.

THE COURT: Wouldn't the fact that the Tide box was in the condition that it was in, in and of itself, bolster the reasonable suspicion?

MR. ARTEAGA-GOMEZ: No. I mean, then you could say the same about your mom.

THE COURT: They should have suspected it. Any Customs officer worth his hull should have suspected that situation.

MR. ARTEAGA-GOMEZ: I mean, there's a lot of tape around the box.

THE COURT: That's unusual, don't you think?

MR. ARTEAGA-GOMEZ: No, because your ship's going out to sea. Water can get around. Things can hit it. I mean, it's just you don't know what condition the box was in before. I mean, someone could be, you know, obsessive-compulsive and just want to tape it.

I've definitely pushed the limits of luggage that

I've carried around with tape. So I don't think that suspicion depends on the amount of tape that's used over the box. There's no evidence that he was involved in any kind of criminal activity beforehand.

So we don't think they meet the suspicion standard.

THE COURT: Let me turn to the Government.

MR. JUMAN: Thank you, Your Honor. One second to assemble my notes. Okay.

I think, briefly, let's, I guess, start with the Fourth Amendment issue.

THE COURT: No. Go to the Miranda issue.

MR. JUMAN: Just go to the Miranda issue?

THE COURT: Go to the Miranda issue.

MR. JUMAN: All right. Your Honor, I think the defense is taking the wrong approach to the Miranda issue. The law is clear in the Eleventh Circuit, and I think even clear in the Supreme Court, that the standard is totality of the circumstances.

We cited a case, I think it's called Broosly (phonetic), a case in our papers on that point. You can't nitpick and individually pick out one word that you disagree with and say, well, therefore, the entire Miranda warnings are inappropriate. That would impose a rigid script, which the Court has said we don't apply.

But to take on the issues that they've raised, the

first issue that they've raised is "before" versus "after." I was trying to explain, perhaps inartfully before, the issue there is not something that their expert can provide any guidance on. It's simply a matter of listening to the tape and finding whether the agent said the word for "before," which is "avan," or "after," which is "aprie." Both are different sounds. So the expert is in no better position than anybody, including Your Honor, to listen to the tape.

Also, this is not simply an abstract transcript of a conversation held long ago. We heard from Agent Philippe. We know what he was doing. He was translating the specific language of Exhibit 1.

THE COURT: Well, go back a second.

MR. JUMAN: Yeah.

THE COURT: My understanding of the difference, the distinction, in paragraph 7 is that their translation agrees with the use of the word "avan" in one sentence but then followed by the "after you give us any statements" sentence.

MR. JUMAN: Exactly.

THE COURT: So, the dispute, my understanding as to this, is that the clause of the sentence, excuse me, "after you gave us any statements," that's the issue in dispute as to whether or not that was actually said, right?

MR. JUMAN: Your Honor, I believe if you look and compare the transcripts side by side, it's not actually in

addition. It's really just a substitution of the word "before" versus "after."

THE COURT: They have "avan" in theirs.

MR. JUMAN: They have "avan" and then they have another sentence that begins with "aprie." We have the same sentence. We begin it with "avan" again.

THE COURT: Oh, I see. Okay.

MR. JUMAN: So, again, it's what often happens when you're translating or communicating. You simply repeat yourself, and that's all the agent did in this context. He repeated himself, and as we know, he was reading from a document. The document has the word "before" on it.

THE COURT: Right. So the expert heard "aprie" in that second sentence.

MR. JUMAN: The expert, yes. But he's not an expert in listening to other people. He's an expert in the Creole language. His particular ability to hear something is no better than anybody else's. This is not an issue of translation. Again, it's just a question of what did he say.

THE COURT: Right.

MR. JUMAN: And the agent himself has told us what he said, and there's really no evidence to dispute that.

THE COURT: But at this point, the only sworn testimony I have on this is -- well, I guess I do have the agent as well. But I don't think he was asked a question. I

don't think he was asked directly to contradict the use of "aprie" versus "avan." I don't think he was asked that.

MR. JUMAN: Your Honor, I did.

THE COURT: Did you?

MR. JUMAN: I believe I did. I asked him specifically. We stopped the tape in fact at that point. I asked him what word he had just used, and he confirmed he had used the word "before."

THE COURT: Did you ask him, "Did you say 'aprie'?"

MR. JUMAN: I said what's the Creole word for "before"; what's the Creole word for "after". He distinguished both. We had spelled them for the court reporter.

THE COURT: Is that the kind of thing, do you think, if I listened to the tape, I will be able to tell whether it was "avan" or "aprie"?

MR. JUMAN: I believe the two sound different enough that, yes, you could hear the difference. I also believe that the Court could, if it chose, simply to accept the testimony, which is unrebutted, of the agent who was actually speaking combined with the fact that --

THE COURT: It is being rebutted because the defendant's version is subject to sworn testimony.

MR. JUMAN: It is sworn testimony. But again, not by expert testimony, just by somebody else who happened to listen

to the tape.

THE COURT: But he has a trained ear for Creole. You know, there's a difference between -- to be frank, when I don't understand a language, I may be able to listen for certain things. But there are other things I may not be able to pick up on; whereas, in English or Spanish I can pick up on them because I know the language.

MR. JUMAN: You can. But, again, I think the important point here is the context and the unrebutted testimony that what the agent was doing at the time was translating a written document, which is in evidence, Exhibit 1, and it contains the word "before."

So the hypothesis is, then, in the course of translating, having already translated it correctly as "avan," the agent then somehow accidentally spoke the exact opposite word while reading the very same document and repeating the very same sentence. It just doesn't make a lot of sense, even putting aside the agent's testimony as to what he actually said. And he is the only person who was in that room who has testified.

So we think there's plenty of evidence in the record for the Court to conclude that what was said was "before" and not "after."

Even if there's some doubt, again, our point overall is that context is important. The entirety of the instruction

should be reviewed and the fact that the defendant's demeanor can be judged while you're watching the video.

If the defendant had just heard two completely opposite things, you might expect him to react to that. But he doesn't. He doesn't seem to be hearing two different things. You can tell from his body language and his demeanor that he understands what's being said.

THE COURT: Okay.

MR. JUMAN: To move on, the reference to "if you need one," again, here again, I think context is important. And if you look simply to the two lines before that reference to "if you need one," which as the defense concedes was the agent translating the word "wish," which is on the standard form, it says, if you cannot get an attorney on your own, then they will appoint you one.

So it's not as if there's some abstract concern here that he's going to have to lay some foundation. It's if you cannot pay for one. So that in context it's clear what's being said.

Again, the literal, the form, Exhibit 1, uses the word "wish." It doesn't use the word "want." Defense counsel seems to be suggesting that absent the specific use of the word "if you want one," then there's somehow some deficiency. Again, we submit that that's not the requirement. Barber is the case that I was referring to before that requires the

Court to look at the totality of the circumstances.

Last, there's the reference to the word "use" in English. We submit, first of all, the approach the defense is taking to strike words or pretend that they didn't happen is not appropriate. It's not as if there was a gap. A word was used --

THE COURT: Well, their argument is that if you didn't translate that word, it doesn't count.

MR. JUMAN: Well, that argument with respect is incorrect. This is a defendant who, the evidence shows, speaks some amount of English. The analysis is not just what was said but whether the defendant understood it.

The evidence is that he understands English. Again, his demeanor, if you watch the video, if you listen to the tape, suggests that he does understand what's going on.

We showed examples where the defendant answers questions an his own without waiting for a translation, says words in English, answers the word "yes," but still shows a facility in English.

The testimony from the agents was that upon discovery of the money inside the Tide box, the defendant's first reaction was in English. The evidence from Officer Rodriguez is that in all the prior inspections he's conversed with the defendant in English.

So there's ample basis here to determine, to conclude

that on the totality of the circumstances the defendant understood what was going on. But we don't think there's any better evidence than the video itself, watching the defendant's demeanor as he listened to this and this reaction afterwards. He doesn't ask a follow-up question. He doesn't express any kind of confusion. He simply proceeds and agrees to speak to the agents.

That's everything I have with respect to the Miranda issue unless the Court has any questions. I could speak to the reasonable suspicion point briefly if Your Honor wants. We didn't introduce any additional evidence because we don't think we need to. It's not just a matter of the box being taped in an unnatural way and it's not just a matter of the defendant not answering questions in a straightforward way.

But as Officer Rodriguez testified, he has personal specific experience with this defendant in previous Customs searches and he observed that the defendant was behaving differently this time, nervously, I think he said wishing they would go way.

So the combination of all those factors, even if you needed reasonable suspicion, which we don't think you do, existed in this case and the Court need not go off and tamper with Eleventh Circuit law to find that the search here was appropriate.

THE COURT: Did you want to supplement the record in

any way?

MR. JUMAN: Give me one second, Your Honor, to consult.

THE COURT: Okay.

MR. ARTEAGA-GOMEZ: Can I just ask, Judge, is the video in evidence?

THE COURT: Good question. I need to make sure the video, since you're having me do the translation --

MR. JUMAN: Yes, Your Honor. We offered Exhibit 3 and 4, the two videos.

THE COURT: Okay. Is there any objection to 3 and 4?

MR. ARTEAGA-GOMEZ: No objection.

THE COURT: Okay.

MR. JUMAN: 3-A and 4-A are the transcripts of those videos.

THE COURT: So Exhibits 3 and 4 will be admitted.

(Government's Exhibits 3 and 4 in evidence).

THE COURT: Make sure I have DVDs of those.

MR. JUMAN: Yeah. They should be up on the witness bench.

THE COURT: The DVDs are up there?

MR. JUMAN: The DVDs are there. They were identified by the witness. His initials are on them.

THE COURT: Okay.

MR. JUMAN: At this point, no, the Government does

not want to supplement with anything.

THE COURT: Very well.

MR. JUMAN: Thank you.

THE COURT: Thank you.

Oh, when is your trial date?

MR. JUMAN: The 15th.

MR. ARTEAGA-GOMEZ: We have a calendar call on Tuesday.

THE COURT: Tuesday. Okay.

MR. ARTEAGA-GOMEZ: And trial on the 15th.

THE COURT: We'll try to get you something then before Tuesday. Okay?

MR. JUMAN: Thank you, Your Honor.

THE COURT: Thank you.

(Recessed at 4:42 p.m.)

I N D E X

* * * * * * * * *

C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

William G. Romanishin

Digitally signed by William G. Romanishin
DN: cn=William G. Romanishin, o=US District Court, ou=US Clerk's Office, email=Bill_Romanishin@flsd.uscourts.gov, c=US
Date: 2017.05.08 14:34:15 -04'00'

APPENDIX F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 17-20178-CR-WILLIAMS/TORRES

UNITED STATES OF AMERICA,

Plaintiff,

v.

HUBERT YOUTE,

Defendant.

_____/

REPORT AND RECOMMENDATION
ON DEFENDANT'S MOTION TO SUPPRESS

This matter is before the Court as a result of the Motion to Suppress filed by Defendant Hubert Youte ("Defendant") on April 11, 2017. [D.E. 17].[1] The United States of America ("the Government") filed its Response on April 19, 2017 [D.E. 21], and Defendant's Reply followed on May 3, 2017. [D.E. 25]. the undersigned conducted an evidentiary hearing on the Motion and heard testimony from witnesses called by each side. Following the hearing, a review of Defendant's Motion, the Government's Response, the Reply, and the relevant authorities concerning the issues raised by each Party, we hereby **RECOMMEND** that Defendant's Motion be **DENIED**.

[1] The Honorable Kathleen M. Williams referred the matter to the undersigned on May 1, 2017. [D.E. 22].

I. FACTUAL BACKGROUND

On February 27, 2017, the Government charged Defendant with one count of bulk cash smuggling in violation of 31 U.S.C. § 5332(a). [D.E. 2]. According to the Criminal Complaint, U.S. Customs and Border Protection officers conducted an inspection of the M/V *Doris Sky*, a 259-foot coastal freighter, on February 27, 2017 as the vessel was set to depart Miami, Florida for Port-de-Paix, Haiti. *Id.*, ¶¶ 2-3. At the time of the inspection, Defendant worked as a crewmember on the vessel. *Id.*

The Government offered the testimony of U.S. Customs and Border Patrol officer Angel Rodriguez to describe the search of the vessel. Rodriguez credibly testified that the inspection occurred as a result of standard border inspection policies put in place to protect contraband and other weapons from entering and exiting the country. Rodriguez testified that he conducted a search of the entire vessel with officers from several other law enforcement agencies, and that the inspection involved looking through each individual crewmember's living quarters. Rodriguez stated that he had encountered Defendant on several occasions during the course of his time with U.S. Customs and Border Patrol, and that he frequently conversed in English with Mr. Youte in previous years.

According to Rodriguez, Defendant appeared "nervous" and "uneasy" when officers entered Defendant's cabin. Rodriguez stated that the inspecting officers initially asked Defendant whether he possessed any money or currency valued in excess of $10,000.00, to which Defendant answered "no." After being pressed by officers, Defendant produced approximately $2,000.00 from a pillowcase located on

the cabin's bed. [D.E. 2, ¶ 3]. Officers on the scene once again asked Defendant if he had any more money within the cabin, to which he responded "no." Rodriguez testified that after giving this answer, Defendant removed approximately $200.00 from a pair of jeans located near his bed. During this line of questioning, Rodriguez stated that Defendant spoke English to the officers and appeared to understand the questions asked of him.

After producing the $200.00, officers requested that Defendant step outside his cabin. Rodriguez stated that Defendant was not restrained in any way at this time. Officers conducting the search of the cabin located a box of laundry detergent that appears to have been sealed with heavy tape. *Id.*, ¶ 4. The inspecting officers used a knife to remove the tape and opened the box in Defendant's presence, where they found approximately $37,000.00 of U.S. currency within. Rodriguez testified that, at that point, officers escorted Defendant off of the ship and transported him to the Homeland Security Investigations field office in Miami, Florida.

Upon his arrival at the field office, Defendant explained that he was illiterate, could not understand English, and only spoke his native tongue of Creole. Homeland Security Special Agent Jacque Phillipe, who also testified at the evidentiary hearing, provided translation services at the time Defendant's interrogation began. Agent Phillipe testified that his first language is Creole and that at no point during the translation did Defendant indicate he could not understand the agent's statements and questions. Before the interrogation took place, Homeland Security agents read Defendant his *Miranda* rights in English,

which were then translated into Creole by Agent Phillippe.[2] The *Miranda* statements were read from a "Statement of Rights" form prepared in accordance with Homeland Security protocols, and although Defendant indicated he could not write his name on the sheet, he marked the document with "+" next to each line after Phillippe translated the language into Creole. After waiving his *Miranda* rights, Defendant answered questions about the detergent box and the money found inside.

A grand jury indicted Defendant on March 10, 2017 based on this set of facts. [D.E. 6]. The matter is set for trial on May 15, 2017. [D.E. 11].

II. ANALYSIS

Defendant moves to suppress both the evidence collected on the vessel and the statements made to Border Patrol and Homeland Security officers during and after that search took place. Specifically, Defendant argues that the search of Defendant's cabin required reasonable suspicion (which he claims was lacking) prior to the inspection taking place. Defendant also argues that the warnings provided by the officers – both on the ship and after his detention – failed to comply with *Miranda v. Arizona*, 384 U.S. 436 (1966). Defendant thus concludes that the evidence seized in his cabin, as well as his post-arrest statements, should be suppressed under the Fourth and Fifth Amendment.

[2] According to Phillippe, Defendant spoke English at several points during the interview with Homeland Security officers.

A. The Search of the Vessel's Cabin

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. With few exceptions, warrantless searches are *per se* unreasonable. *See Cady v. Dombrowski*, 413 U.S. 433, 439 (1973). One of the exceptions to the Fourth Amendment's warrant requirement involves "routine searches" taking place at our nation's borders. *United States v. Ramsey*, 431 U.S. 606 (1977); *United States v. Montoya de Hernandez*, 473 U.S. 531, 539 (1985). Border searches "have been considered reasonable" since "before the adoption of the Fourth Amendment," and are grounded "in the recognized right of the sovereign to control, subject to substantive limitations imposed by Congress, who and what may enter the country." *Id.* at 619-20; *see also United States v. Alfaro-Moncada*, 607 F.3d 720, 728 (11th Cir. 2010) ("At the border, an individual has a lesser expectation of privacy, the government has a greater interest in searching, and the balance between the interests of the government and the privacy right of the individual is struck more favorably to the government."). The border search doctrine applies equally to searches of persons and property entering *and* exiting the United States. *See United States v. Hernandez-Salazar*, 813 F.2d 1126, 1138 (11th Cir. 1987) (noting that "[e]very circuit that has considered the question has ruled that the rationales for the 'border exception' apply both to incoming and outgoing persons and instrumentalities.").

In *United States v. Alfaro-Moncada*, the Eleventh Circuit applied the border search exception in a case involving very similar circumstances. In *Moncada*, officers with the United States Customs and Border Patrol conducted an inspection of a vessel docked in Miami, Florida. *Moncada*, 607 F.3d at 723. The inspection involved the entire vessel, including a search of each individual crew cabin. *Id*. After entering Moncada's cabin, officers discovered DVDs that appeared to show young girls engaged in a variety of sexual acts. *Id*. at 724. Officers requested permission to watch the DVDs and confirmed that each contained child pornography. *Id*. at 725. Officers took Moncada into custody, and shortly thereafter a grand jury indicted him for two counts of possession of child pornography. *Id*.

Prior to trial, Moncada moved to suppress the DVDs and the statements he made about their contents, arguing that the search violated the Fourth Amendment. *Id*. The District Court denied the motion, finding that the inspection of the cabin constituted a "routine border search" that did not require a warrant. *Id*. After a one-day trial, a jury found Moncada guilty of possession of child pornography and he was sentenced to 87 months in prison. *Id*. at 725-26.

Moncada appealed the conviction, arguing that the district court erred in denying his motion to suppress. *Id*. at 726. The Eleventh Circuit disagreed, finding that the suspicionless search of the cabin did not violate the Fourth Amendment. The Court relied on the border search exception in the face of the argument that a crew member's quarters was akin to a home Fourth Amendment purposes:

> [A]ny expectation of privacy a crewmember has in his living quarters is weaker when those quarters are brought to the border of this

> country…There are no inspection-free zones on a foreign cargo vessel at the border, just as there are none in an airplane or a motor vehicle. Someone who travels to the border in a recreational vehicle that also serves as his home could not reasonably expect that it would not be subject to search. The same is true of a crewman whose cabin, along with the rest of his ship, travels three miles up the Miami River to dock.

Id.

Moncada is binding authority on this Court and we must follow its holding and guidance. We therefore find that the search of Plaintiff's cabin here, like the one in *Moncada,* constituted a routine border search that did not require officers to obtain a warrant prior to conducting the inspection. Contrary to Defendant's arguments, the search of this crew member's cabin was, in fact, a routine search. As Officer Rodriguez credibly explained, Customs agents routinely search vessels like this when they dock (principally for illegal narcotics) as well as when they leave port (often with the proceeds of illegal or unlicensed activity – like bulk cash). The search of this crew member's cabin fell squarely within the routine activities of Customs agents on outgoing vessels docked at the Miami River. The scope of the search also fell within that routine border examination, as Officer Rodriguez engaged in a traditional search and review of Defendant's cabin for anything out of the ordinary. There is thus no material difference between the scope of the search approved in *Moncada* and the one conducted here. *Moncada* dictates that the border search exception govern.

Though Defendant dutifully acknowledges the *Moncada* decision's holding, he tries in vain to distinguish that case in his effort to suppress the incriminating

evidence found in the box found in his cabin. Defendant points out that the Eleventh Circuit has also recognized the necessity of reasonable suspicion in cases involving particularly "intrusive" searches like strip searches or body cavity inspections. *See, e.g., United States v. Vega-Barvo,* 729 F.2d 1341, 1344-45 (11th Cir. 1984); *Brent v. Ashley*, 247 F.3d 1294, 1300 (11th Cir. 2001). But Defendant forgets that those Eleventh Circuit cases apply a different standard based on the level of indignity involved in those types of intrusive searches. There is no particular indignity at play in opening a taped detergent box in one's crew cabin that could easily be re-taped when the search was over.

The type of search at issue in *Moncado* is far more relevant to the search at issue here. Indeed, arguably that search was more invasive as it involved finding personal effects, viewing them in front of the defendant, and confirming with him present that child pornography was found inside. Yet, the Eleventh Circuit upheld that search without a showing of reasonable suspicion. A search of a taped detergent box should meet a similar fate under the border search exception. After all, the Eleventh Circuit has long held that searches of luggage at a border fall squarely within the border search exception. *E.g., Vega-Barvo,* 729 F.2d at 1345. The search of this Defendant's box is tantamount to a search of his locked luggage. Indeed, we have identified no Eleventh Circuit case that holds that the type of search conducted in this case fell outside the broad scope of the border search exception.

Undeterred, Defendant argues that decisions from several other Circuit Courts of Appeal have held that "reasonable suspicion" is required in searches similar to that of Defendant's cabin.[3] According to Defendant, because the search involved "destruction of property" – i.e., the removal of the tape found on the detergent box and the examination of its contents – the Government is required to show that reasonable suspicion justified the search of Defendant's cabin. But Defendant oversells the breadth of these cases. Not one of these out-of-circuit cases holds that the type of search conducted here required reasonable suspicion. Instead, these cases – as does *Moncada* – only require "non-routine" searches to be justified by reasonable suspicion, due in large part to the invasive nature of the searches at issue. Luggage-type searches do not fall in that category. *See Whitted*, 541 F.3d at 486 ("Accordingly, patdowns, frisks, luggage searches, and automobile searches, involving neither a high expectation of privacy nor a seriously invasive search, are routine, whereas body cavity searches, strip searches, and x-ray examinations are considered nonroutine by virtue of their significant intrusion on an individual's privacy."). And one cannot reasonably analogize an "invasive" search of one's body to what took place here, as the evidence Defendant seeks to suppress was located within a box of laundry detergent. *Cf. Brent v. Ashley*, 247 F.3d 1294, 1300 (11th Cir. 2001) (reasonable suspicion required for strip search of passenger arriving into United States); *Denson v. United States*, 574 F.3d 1318, 1344

[3] *See United States v. Whitted*, 541 F.3d 480, 488 (3d Cir. 2008); *United States v. Smith*, 273 F.3d 629, 633 (5th Cir. 2001); *United States v. Alfonso*, 759 F.2d 728, 738 (9th Cir. 1985).

(reasonable suspicion necessary to support border patrol agents search of suspected drug mule's person, including use of laxatives, monitoring of bowel movements and pelvic examination).

The Defendant's cited cases are also factually inapposite in other ways. For instance, in *Smith*, the Fifth Circuit applied a reasonable suspicion standard only because the Government used that standard to argue against a criminal defendant's motion to suppress evidence at the trial level. *Smith*, 273 F.3d at 633.[4] In *Whitted* and *Alfonso*, the searches at issue involved passenger cabins on cruise ships. *Whitted*, 541 F.3d at 488; *Alfonso*, 759 F.2d at 733. But any argument that the cabin constituted Defendant's "home" on this cargo vessel – and therefore should be afforded the same protections afforded the passenger cabins in *Whitted* and *Alfonso* – was already squarely rejected in *Moncada*:

> While Alfaro-Moncada was not subjected to a highly intrusive search of his body, his cabin was searched and that implicated significant Fourth Amendment principles. A cabin is a crew member's home – and a home receives the greatest Fourth Amendment protection.
>
> In none of [the] decision discussing the Fourth Amendment protections afforded to the home was it at the border, and on that critical distinction this case turns. A home in a fixed location within the United States cannot be used as a means to transport into this country contraband [or] weapons of mass destruction that threaten national security. A crew member's cabin, like the rest of the ship on which it is located, can and does pose that threat.

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[4] In *Smith*, the Government argued that reasonable suspicion supported the search at the district court level. *Smith*, 273 F.3d at 633. On appeal, and despite not raising the issue with the trial court, the Government argued that reasonable suspicion was *not* required because the search constituted a routine border inspection. *Id*. The Court rejected the Government's attempt to "change its tune" and analyzed the suppression motion based on the reasonable suspicion standard. *Id*.

Moncada, 607 F.3d at 729-30. So the cases Defendant relies upon are of little value in this context.

Defendant ultimately hinges his argument on the use of knife to break though the tape that was sealing Defendant's detergent box. Defendant claims that this type of destruction of property requires reasonable suspicion because, by using such methods, law enforcement is no longer engaged in a routine border search. But the Court finds that this theory has no place here. Had no evidence been found in the box, it could have been re-sealed. No destructive testing was used that altered its essential nature or its contents. Just like a locked piece of luggage at the airport, these Customs agents simply unsealed the box. That is a far-cry from a non-routine search at the border. Even the Ninth Circuit has rejected Defendant's contrary view when it comes to sealed containers. In *United States v. Seljan,* the Ninth Circuit rejected a defendant's claim that the forced opening of a FedEx package, travelling through the border, was tantamount to an intrusive destruction of property. 547 F.3d 993, 1002-04 (9th Cir. 2008). The Court reasoned that opening a sealed package and reading its contents for evidence of contraband did not require reasonable suspicion because it did not result in the total destruction of the package and the search was not particularly offensive. *Id*. at 1002. That court also distinguished the strip search cases that Defendant relies on here because those cases involved "highly intrusive searches of the person" that invaded the "dignity and privacy interests of the person being searched," which cases had no bearing on the search of a sealed FedEx package. *Id*.

Moreover, even assuming that the reasonable suspicion standard applied, Defendant would likely fare no better. Upon entering the subject cabin, Officer Rodriguez testified that Defendant appeared uneasy and hesitant about the search that was about to take place. During routine questioning, Defendant denied possessing any currency in excess of $10,000.00 on three separate occasions, but immediately thereafter produced $2,000.00 from a pillowcase on his bed and $200.00 from a pair of pants hanging in the room. *Id*. And then upon visual inspection of the cabin, an oddly taped detergent box was found. All these factors would certainly support a finding of reasonable suspicion.

In sum, *Moncada* governs this case. We hold that the search of Defendant's cabin served as nothing more than a routine border search that did not require obtaining a warrant prior to undertaking the search. Further, even if the law required officers to justify their search with reasonable suspicion – which it does not – the circumstances present here demonstrate that such reasonable suspicion existed. Accordingly, the Motion to Suppress all physical evidence seized from Defendant's cabin should be denied.

B. Defendant's Statements

Defendant next argues that any statements made on the vessel and after being taken into custody should be suppressed. He claims that *Miranda* warnings were not given at the time officers conducted their search of his cabin. [D.E. 17, p. 10]. Additionally, Defendant argues that Agent Phillipe's translation of the *Miranda* warnings from English to Creole failed to adequately warn Defendant

about the consequences of any statements made to law enforcement and the ability to have a lawyer appointed for him at the time the questions were asked. Accordingly, Defendant claims that he did not knowingly waive his *Miranda* rights and that the statements made after the search of his cabin should be excluded at trial.

1. Statements Made During the Cabin Search

The Fifth Amendment provides that "[n]o person…shall be compelled in any criminal case to be a witness against himself." U.S. Cont. amend. V. In *Miranda v. Arizona*, the Supreme Court established that law enforcement agents may not conduct a custodial interrogation of a suspect before informing him of his rights against self-incrimination. *Miranda v. Arizona*, 384 U.S. 436, 473-74 (1966). Statements made in violation of *Miranda* are not admissible at trial. *Id*. at 444-45.

A person is considered to be in "custody" for the purposes of *Miranda* when officers effectuate a formal arrest, or restraint of one's freedom of movement is such that it serves as the functional equivalent to a formal arrest. *United States v. Brown*, 441 F.3d 1330, 1347 (11th Cir. 2006). Whether a person is in custody prior to a formal arrest depends on whether, under the totality of the circumstances, a reasonable person in his position would feel a restraint on freedom to the extent that the person would not feel he or she has to right to leave the scene. *Id*. The test is objective, and the subjective beliefs of the defendant or the interviewing officers on the issue are irrelevant. *Id*.

Defendant contends that any statements made during or in the immediate aftermath of the search of his cabin should be suppressed because he failed to receive *Miranda* warnings on the vessel. Although in general *Miranda* warnings are not required during the course of routine border searches, other circumstances will dictate whether such warnings be given. *See United States. v. Moya*, 74 F.3d 1117, 1119 (11th Cir. 1996). In *Moya*, the Eleventh Circuit stated:

> [Q]uestioning at the border must rise to a distinctly accusatory level before it can be said that a reasonable person would feel restraints on his ability to roam to the degree associated with formal arrest. We stress that events which might be enough often to signal "custody" away from the border will not be enough to establish "custody" in the context of entry into the country. This idea is consistent with cases involving facts similar to this one, which have indicated that a secondary interview is part of the border routine and does not require *Miranda* warnings.

Id. (internal citations and quotations omitted). Officers are allowed to include "some degree of questioning" during the course of a routine border search due to the strong governmental interest in controlling and protecting the borders of the United States. *Id*.; *see also United States v. Lueck*, 678 F.2d 895, 899 (11th Cir. 1982) ("Interrogation at the border constitutes one notable exception to the constitutional protection of *Miranda*…[b]ecause of the overriding power and responsibility of the sovereign to police national borders.").

Here, the questioning by officers did not rise to such an "accusatory level" that an objective person would feel he or she had been placed under arrest. Officer Rodriguez testified that he always asks crewmembers about the currency being carried during every border search he effectuates, and that at no point in time had

Defendant been restrained during the course of the cabin's search. As a result, any discussion took place on the vessel did not occur as a result of a custodial interrogation, and no *Miranda* warnings were required. As such, Defendant's Motion to Suppress these statements should be denied.

2. Post-Arrest Statements

The more nuanced issue concerns the statements made by Defendant to officers at the Homeland Security Investigations field office. There can be no question that these statements were made during a custodial interrogation. The issue turns on whether the warnings provided by officers complied with the procedural protections put in place by *Miranda*.

The Supreme Court determined that any custodial interrogation that involves "inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not do so freely" violates the Fifth Amendment's provision against self-incrimination. *Miranda*, 384 U.S. at 437. The Court, therefore, created a presumption that evidence produced by custodial interrogation is coerced unless a suspect is first informed of his constitutional right to remain silent and the right to have an attorney present during questioning. *Id*. The suspect must also be informed that any statement he makes may be used as evidence against him and that he has a right to appointed counsel. *Id*. at 444-45. Absent such warnings, the government must not use a statement obtained from a suspect if the accused invokes his right to remain silent. *Id*. at 474. The Government bears the burden of showing that Defendant's in-

custody statements were obtained in compliance with *Miranda*. *Missouri v. Seibert*, 542 U.S. 600, 608 n.1 (2004); *Colorado v. Connelly*, 479 U.S. 157, 168 (1986).

A defendant may waive the rights conveyed in the warnings "provided the waiver is made voluntarily, knowingly and intelligently." *Miranda*, 384 U.S. at 444, 475. This inquiry has two distinct dimensions: first, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion or deception. *Moran v. Burbine*, 475 U.S. 412, 421 (1986). Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. *Id*. Only if the "totality of the circumstances" surrounding the interrogation reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived. *Id*. (collecting cases). A criminal suspect is not required to know and understand "every possible consequence of a waiver for it to be knowingly and intelligently made." *United States v. Gaddy*, 894 F.2d 1307, 1312 (11th Cir. 1990). In order for a waiver to be knowing and intelligent within the meaning of *Miranda*, it is only necessary that the suspect understand "that he may choose not to talk to law enforcement officers, to talk only with counsel present, or to discontinue talking at any time." *Id*. (quoting *Colorado v. Spring*, 479 U.S. 564, 574 (1986)).

There is no question that agents *attempted* to fully advise Defendant of his rights under *Miranda*. The issue is whether such warnings adequately *conveyed* to Defendant his rights so that his waiver was effective and voluntary. We find that

they did.[5] A review of the video recorded during the reading of *Miranda* rights shows that Defendant had no issues communicating with Agent Phillipe in Creole. Defendant appears attentive and responsive to each question posed to him by Agent Phillipe, and at no point does he show confusion as to each individual statement made in Creole. In our view, there is no question that Defendant understood he was under no obligation to speak to the officers and that he had a right to have counsel present during any questioning that took place. *Gaddy*, 894 F.2d at 1312.

Further, the unrebutted evidence at the hearing demonstrated that Defendant could at least understand conversational English, which is a factor the Court can include in the totality of circumstances analysis. *See United States v. Jean*, 285 F. App'x 651, 653 (11th Cir. 2008) (defendant, a native Creole speaker who claimed he did not speak English, moved to suppress statements made to law enforcement after *Miranda* warnings were provided only in English; evidentiary hearing on the motion demonstrated that defendant could at least understand spoken English and the motion to suppress was denied). Officer Rodriguez credibly testified that he had spoken with Defendant in English on several occasions prior to the search that took place on February 27, 2017. Additionally, Rodriguez stated that

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[5] Defendant argues that the Creole interpretation provided by Agent Phillipe indicated that he would not be able to speak with a lawyer until "after" he made statements to officers present. Additionally, Defendant claims that Agent Phillipe did not inform him that an attorney would be provided as a matter of right, but rather as a matter of need. To support these claims, Defendant elicited testimony from Dmitri Hilton, who appeared at the evidentiary hearing. Mr. Hilton testified that the Creole used by Agent Phillipe was imperfect and "second generation," and that certain words used by Phillipe would not have been understood by a native Creole speaker.

Defendant responded to questions in English while officers searched his cabin on the night in question. Only after Defendant was placed into custody did he claim that he could not speak or understand English, and we do not find this be a credible claim.

As to Defendant's contention that Agent Phillipe's translation indicated that he could not speak to an attorney until *after* he spoke with Homeland Security officers, we again disagree. *Miranda* warnings "need not be perfect; rather, the warnings need only reasonably convey the defendant's rights." *United States v. Woods*, 684 F.3d 1045, 1055 (11th Cir. 2012) (*quoting Florida v. Powell*, 559 U.S. 50, 61 (2010)) (quotations omitted). Defendant's attempt to "cherry pick" certain words from the English-to-Creole translation to support his Motion to Suppress would require us to adhere to the very "talismanic incantation" that *Miranda* itself indicated was unnecessary "to satisfy its strictures." *California v. Prysock*, 453 U.S. 355, 358 (1981); *see also Duckworth v. Egan*, 492 U.S. 195 (1989) (warning advising suspect that he or she has the right to counsel during any interrogation, but that an attorney would be appointed "if and when you go to court" complied with *Miranda*). The Statement of Rights form read to Defendant in English – and then translated into Creole by Agent Phillipe – definitively meets the *Miranda* requirements, and the translation provided by Phillipe clearly informed him of his right to remain silent and consult an attorney prior to answering any questions. This conclusion is bolstered by the fact that Defendant's own expert testified that Agent Phillipe's Creole, although not perfect, rated a "6" on a scale of 1-10, which indicates that the

translation was more than sufficient to inform Defendant of his rights at the time the interview took place and before he agreed to speak to officers at the field office.

In sum, we find that the totality of the circumstances evidences that Defendant voluntarily waived his *Miranda* rights prior to his recorded statement. Because the evidence shows that Defendant decided to abandon his right to remain silent and did not wish to seek the advice of counsel prior to answering questions pertaining to the money found in his cabin, his Motion to Suppress those statements should be denied.

III. CONCLUSION

Based on the foregoing, it is hereby **RECOMMENDED** that Defendant's Motion to Suppress be **DENIED**. Pursuant to Local Magistrate Rule 4(b), and due to the fact that trial is currently set for May 15, 2017, the Parties shall have until May 9 to file written objections, if any, with the Honorable Kathleen M. Williams, United States District Judge. Failure to timely file objections shall bar the parties from *de novo* determination by the District Judge of any factual or legal issue covered in the Report *and* shall bar the parties from challenging on appeal the District Judge's Order based on any unobjected-to factual or legal conclusions included in the Report. 28 U.S.C. § 636(b)(1); 11th Cir. Rule 3-1; *see, e.g., Patton v. Rowell,* 2017 WL 443634 (11th Cir. Feb. 2, 2017); *Cooley v. Commissioner of Social Security,* 2016 WL 7321208 (11th Cir. Dec. 16, 2016).

DONE AND ORDERED in Chambers at Miami, Florida this 5th day of May, 2017.

/s/ Edwin G. Torres
EDWIN G. TORRES
United States Magistrate Judge

APPENDIX G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 17-20178-CR-WILLIAMS/TORRES

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HUBERT YOUTE,

Defendant.
_____/

Defendant's Objections to Report and Recommendation on Motion to Suppress

The Defendant, Hubert Youte, through undersigned counsel, submits the objections to the report and recommendation on the motion to suppress.[1]

Objections to Factual Findings

As a general matter, the Magistrate Judge overstates the evidence regarding Mr. Youte's command of the English language. We object to the factual finding that Customs and Border Patrol officer Angel Rodriguez "had encountered Defendant on several occasions during the course of his time with U.S. Customs and Border Patrol, and that he ***frequently conversed in English*** with Mr. Youte in previous years." DE27:2 (emphasis added). Officer Rodriguez did not testify that he "frequently conversed" with Mr. Youte in English. Rather, he testified that, over the course of his approximately 12 years with Customs, while conducting inbound

[1] "Tr." is the draft suppression hearing transcript provided to undersigned counsel on May 8, 2017, and attached hereto as **Exhibit 1**. Also attached is the defense version of the transcript of the *Miranda* advice portion of the post-arrest interrogation, DX 1 at the hearing and attached hereto as **Exhibit 2**.

inspections of cargo vessels, he had seen Mr. Youte serving as a crew member on such vessels, and had ***questioned*** Mr. Youte in English. Tr. 12. Officer Rodriguez denied previously "interacting" with Mr. Youte, and testified that those prior occasions consisted only of him asking Mr. Youte normal inspection questions pursuant to protocol. Tr. 25. We also object to the factual finding that, on the date in question, February 27, 2017, "Rodriguez stated that Defendant spoke English to the officers and appeared to understand the questions asked of him." DE27:3. The most that Mr. Youte said to the officers while they inspected his cabin were the simple responses "Yes" and "No." Tr. 14-15. This hardly rises to the level of competent evidence that Mr. Youte "spoke" to the officers on the ship in English. The finding that "Defendant spoke English at several points during the interview with Homeland Security officers," DE27:4, is similarly overstated. SA Philippe testified that Mr. Youte answered with the word, "Yes" to the question, stated in Creole, "Do you understand what I've just said?" Tr. 38. He also identified one point during the second post-arrest interview where Mr. Youte answered the English question, "This is Jeff, right?" with the word "Yes," before SA Philippe could translate the question. Tr. 44-45, GX 4 at 02:16. In short, the extent of the evidence regarding Mr. Youte's use of the English language was his use of the simple words "Yes" and "No." Mr. Youte did not demonstrate any real command of the English language, and certainly not the level of command required to fully appreciate and understand his *Miranda* rights.

To the extent that Mr. Youte had any minimal grasp of the English language, it could not have assisted him in understanding his *Miranda* rights. The undisputed evidence is that Mr. Youte is illiterate, and thus, he could not have been able to read the written English-language *Miranda* form that the agents presented to him. Tr. 32. The *Miranda* rights were also not read to him in English. The Magistrate Judge is incorrect in stating that "Before the interrogation took place, Homeland Security agents read Defendant his *Miranda* rights in English, which were then translated into Creole by Agent Philippe." DE27:4. The portion of the video recording of the first interview where SA Philippe attempts to communicate the *Miranda* warnings does not show him reading the warnings in English; he is only speaking Creole. GX 3 at 03:16, DX 1:7.

The Magistrate Judge is also incorrect in finding that "at no point during the translation did Defendant indicate he could not understand the agent's statements and questions." DE27:3. Mr. Youte did not expressly state that he was confused, but there was certainly evidence of miscommunication during the *Miranda* advice portion of the post-arrest interrogation. The transcript of the first several minutes of the interrogation indicates that Mr. Youte did not fully understand that he had the legal right to stop questioning and remain silent. After attempting to read Mr. Youte *Miranda* rights, SA Lopez asks in French, "Do you greatly understand?," to which Mr. Youte responds in Creole, "I see you all are talking so I'm listening." DX 1:8. Soon after, SA Philippe asks in Creole, "Are you going to talk to us?" to which Mr. Youte responds in Creole, "We're talking right now." DX 1:8. These exchanges

are indicative of a failure between Mr. Youte and the agents to communicate, and show that Mr. Youte failed to appreciate that he had the option to cease the interrogation.

Objections to Legal Conclusions

1. **The Magistrate Judge erred in finding that there was no Fourth Amendment violation.**

The Magistrate Judge erred in finding that the search of Mr. Youte's cabin, "like the one in [*United States v. Alfaro-]Moncada*, 607 F.3d 720 (11th Cir. 2010), constituted a routine border search," not demanding of any reasonable suspicion and that there is "no material difference between the scope of the search approved in *Moncada* and the one conducted here." DE27:7. Unlike here, the officers in *Moncada* did not destroy any property. Rather, they "searched some luggage . . . sifted through some clothes . . . lifted the mattress and rummaged through some drawers . . . searched the top of the desk . . . [and] took some [CDs and DVDs] out of the [desk] drawer." *Moncada*, 607 F.3d at 724-25. Here, by contrast, the officers used a knife to cut open the cardboard Tide box in Mr. Youte's cabin.

The Magistrate Judge further erred in finding that, unlike strip searches or body cavity inspections at the border, which do require reasonable suspicion, "there is no particular indignity at play in opening a taped detergent box in one's crew cabin that could easily be re-taped when the search was over." DE27:8. This view cannot be reconciled with the statement of multiple courts that border searches involving the destruction of property are also considered "highly intrusive," and thus demanding of reasonable suspicion. *See United States v. Rivas*, 157 F.3d 364,

367 (5th Cir. 1998) (drilling into the frame of an auto-body trailer at border requires reasonable suspicion); *United States v. Flores-Montano*, 541 U.S. 149, 154 n. 2 (2004) (leaving open question of whether a border search involving destruction of property requires reasonable suspicion); *United States v. Joseph*, No. 12-8003-Cr-Ryskamp, 2012 WL 163886, at *3 (S.D. Fla. Jan. 19, 2012) ("In some circumstances, the government must have reasonable suspicion to perform a search at the border. But those instances generally are confined to 'highly intrusive searches of the person,' such as strip searches or body cavity searches, . . . searches carried out in a 'particularly offensive manner,' or searches that are destructive of property.") (citations omitted).[2] The Fourth Amendment protects "effects" from unreasonable searches just as it protects one's "person." The fact that a cardboard Tide detergent box may be viewed by some as a container with de minimis value does not lessen its protections under the Fourth Amendment. *United States v. Ross*, 456 U.S. 798, 822 (1982) ("One point on which the Court was in virtually unanimous agreement in *Robbins* was that a constitutional distinction between "worthy" and "unworthy" containers would be improper. Even though such a distinction perhaps could evolve in a series of cases in which paper bags, locked trunks, lunch buckets, and orange crates were placed on one side of the line or the other, the central purpose of the Fourth Amendment forecloses such a distinction."). The Magistrate Judge therefore

[2] Moreover, as a factual matter, the Magistrate Judge was incorrect in finding that the officers, "like a locked piece of luggage at the airport . . . simply unsealed the box," and that the box "could have been re-sealed." DE27:11. The government's photograph of the box, admitted into evidence, showed that the officers used a knife to cut open both the tape wrapped around the box and the sides of the box itself. GX 2. The box was, for all practical purposes, irreparably destroyed.

erred in finding that the officers' act of cutting open the Tide detergent box was not a highly intrusive border search. The search demanded a showing of reasonable suspicion.

The Magistrate Judge further erred in finding that the search of the box was supported by reasonable suspicion. There was no evidence that officers boarded the ship with any reason to believe that Mr. Youte was engaged in any criminal or suspicious activity. Moreover, Officer Rodriguez did not testify, as stated by the Magistrate Judge, that Mr. Youte "appeared uneasy and hesitant about the search that was about to take place." DE27:12. Rather, he testified that Mr. Youte's "body language was not the same and his face looked like a little like he was upset that we were there." Tr. 13. Mr. Youte may have been upset for all sorts of innocent reasons, and upset body language does not necessarily equate to hesitance or uneasiness. The Magistrate Judge notes that Mr. Youte denied possessing over $10,000 but then produced the loose cash in his room when questioned by the officers. DE27:12. But this is evidence that Mr. Youte was cooperative with the officers when they inquired about currency in his room. Since the officers did not know the Tide box's contents at the time, Mr. Youte's denial about carrying over $10,000 was not evidence of any effort to deceive the officers. The Magistrate Judge said that the Tide box was "oddly taped," but Officer Rodriguez's testimony was that the box had "extra" or "a lot of" clear tape around it. Tr. 18. This is evidence of intent to keep a container's contents private. Indeed, the Fourth Amendment would be turned on its head if

extra efforts to keep a space or container private would be grounds for intruding upon the space or container.

In sum, the officers' search of the Tide box required reasonable suspicion as their act of breaking into it with a knife was a highly intrusive search. They lacked such suspicion, and thus, their search violated the Fourth Amendment.

2. The Magistrate Judge erred in finding that the agents adequately conveyed *Miranda* warnings to Mr. Youte in his post-arrest statement.

At the suppression hearing and in the reply memorandum (DE25), the defense identified three deficiencies in SA Philippe's administration of *Miranda* warnings in Creole. *See Miranda v. Arizona*, 384 U.S. 436, 469 (1966).

First, SA Philippe did not advise Mr. Youte that anything he said could be used to incriminate him. With respect to this aspect of the Miranda warning, Mr. Youte was advised: "Anything you tell us, we can ~~use~~ it in [U/I], in court or [U/I] . . . ." DX 1:7. In the defense version of the transcript of the first post-arrest interview, we struck the word "use" because it was said in English and not translated to Creole for Mr. Youte. Thus, this warning was communicated to Mr. Youte in Creole as, "Anything you tell us, we can . . . it in . . ., in court . . . ." It did not convey to Mr. Youte that his statements would be *used against him* in court, and was therefore deficient. *See Fare v. Michael C.*, 442 U.S. 707, 724–25 (1979) (court must examine totality of circumstances to determine whether the accused had "the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, ***and the consequences of waiving those rights***") (emphasis added).

The Magistrate Judge found that this was an insignificant deficiency, relying largely on the statement in *United States v. Gaddy*, 894 F.2d 1307, 1312 (11th Cir. 1990), that "A criminal suspect is not required to know and understand every possible consequence of a waiver for it to be knowingly and intelligently made." DE27:16, 17. But *Gaddy* did not deal with the adequacy of the specific *Miranda* warnings communicated to the defendant or the accuracy of an agent's translation of *Miranda* rights from English to a foreign language. *See Gaddy*, 894 F.2d at 1311-12. The issue was whether a defendant with certain mental illnesses knowingly and intelligently waived *Miranda*; the court appeared to take it as a given that the rights themselves were accurately communicated to the defendant. *See id.* at 1312. The Eleventh Circuit's decision in *United States v. Street* is more directly on point, as that was a case where the officer only advised the defendant "that he had the right to remain silent and a right to have a lawyer present," which was a problem of "substance and omission" because the defendant "was not told that anything he said could be used against him in court." 472 F.3d 1298, 1304, 1312 (11th Cir. 2006).

The Magistrate Judge emphasizes that a "review of the video . . . shows that the Defendant had no issues communicating with Agent Philippe in Creole, . . . appears attentive and responsive to each question . . . and at no point does he show confusion[.]" DE 27:17. But these factors are entirely beside the point when it comes to analyzing whether the agents adequately conveyed to Mr. Youte his *Miranda* rights. There is no evidence that Mr. Youte has any prior experience with the American criminal justice system or has previously been read *Miranda* rights. He is

not responsible for filling in the blanks created by the trained, professional agents' deficient advice of rights.

Second, the *Miranda* warnings given to Mr. Youte impermissibly conditioned Mr. Youte's right to the presence of counsel by suggesting he had to give a statement before counsel could be present for questioning. The error arose when SA Philippe informed Mr. Youte in Creole, "You have the right to contact an attorney before you make any statements. After you give us any statements. You have the right to have an attorney present with you while being questioned." DX 1:7.

To be sure, whether SA Philippe said "Before you give us any statements," or "After you give us any statements" was a contested fact at the suppression hearing, with the government claiming the former and the defense claiming the latter. *Compare* Tr. 38-39 *with* Tr. 57-58, DX 1:7. In support of its position, the government relied on the word of SA Philippe himself, who has never studied Haitian-Creole, never received formal training in the language, and never worked as an interpreter. Tr. 46-47. In support of its position, the defense presented the testimony of Dimitri Hilton, an expert in Haitian-Creole who is a native Haitian-Creole speaker, holds a Masters in Linguistics, has published on issues of Haitian-Creole language, and has worked approximately seven years as a Haitian-Creole translator and interpreter. Tr. 48-49. In Mr. Hilton's opinion, SA Philippe exhibited a limited proficiency in Haitian-Creole (giving him a 6 on a scale from 1 to 10), due to SA Philippe's long pauses, awkward syntax and sentence formation, and limited vocabulary. Tr. 54-55.

The Magistrate Judge did not expressly credit one factual position over the other, but implied that the warning was adequate even under the defense's position. DE27:16, 17 n.5, 18. This was error. By including the sentence, "After you give us any statements," immediately before, "You have the right to have an attorney present with you while being questioned," the agent suggested that the right to have an attorney present during "questioning" was conditioned on first giving a "statement." This rendered the advice of rights deficient. *See, e.g., United States v. Wysinger*, 683 F.3d 784, 798, 803 (7th Cir. 2012) (warning deficient where agent told defendant he had "a right to talk to a lawyer for advice before we ask any questions or have one—have an attorney with you during questioning," and agent drew a distinction between "questioning" and "advice" phases of interrogation, "both of which qualify as interrogation," where "*Miranda* clearly requires that a suspect be advised that he has the right to an attorney both before and during questioning").

The Magistrate Judge claims that the defense is attempting to "cherry pick certain words from the English-to-Creole translation to support the Motion to Suppress," DE27:18, but this argument misses the clear deficiency in the advice given to Mr. Youte. The Magistrate Judge cites to *Duckworth v. Eagan*, 492 U.S. 195 (1989) and *California v. Prysock*, 453 U.S. 355 (1981) (at DE27:18), but those cases set forth the principle that supports Mr. Youte's position. *Duckworth* noted that in "*Prysock,* . . . we suggested that *Miranda* warnings would not be sufficient if the reference to the right to appointed counsel was linked [to a] future point in time

after the police interrogation." 492 U.S. at 204-05. This is precisely the flaw in the advice given by SA Philippe to Mr. Youte. The giving of a "statement" is clearly part of the interrogation process. By telling Mr. Youte that he could have counsel "while being questioned," but only "After you give us any statements," DX 1:7, the agent necessarily tied Mr. Youte's right to the presence of counsel during questioning to a "future point in time after the police interrogation." *Duckworth*, 492 U.S. at 204-05. The advice was therefore deficient.

Third, the *Miranda* warnings given to Mr. Youte impermissibly conditioned Mr. Youte's right to the presence of counsel by suggesting that he would have to make some showing of "need" for counsel, separate and apart from financial qualification, in order to be appointed counsel. SA Philippe advised Mr. Youte, "If you don't have… If you cannot pay an attorney yourself [ph]. They will get you one before [Pause]… [Beeping noise] … If you cannot get an attorney on your own then they will appoint you one before if you need one." DX 1:7. There was no factual dispute that this is what SA Philippe said to Mr. Youte. Tr. 40; DX 1:7; DE27:17 n.5.

The critical flaw in this portion of the advice of rights was SA Philippe's use of the phrase "if you need one." By inserting the phrase "if you need one" at the end of the statement, "If you cannot get an attorney on your own then they will appoint you one before if you need one," the agent suggested that appointment of counsel required some showing of "need" separate and apart from indigence. *Miranda* requires that the indigent be clearly advised that they have an unqualified right to

counsel. *See Miranda*, 384 U.S. at 473 ("The warning of a right to counsel would be hollow if not couched in terms that would convey to the indigent—the person most often subjected to interrogation—the knowledge that he too has a right to have counsel present."). The agent's advice of rights failed to communicate this unqualified right to Mr. Youte.

A comparison of what SA Philippe intended to say with what he actually said illustrates the deficiency. SA Philippe testified that he intended to advise Mr. Youte, "If you cannot afford an attorney, one will be appointed for you before any questioning, if you wish." Tr. 40. Rather than say "if you wish" in Creole, SA Philippe mistakenly said "if you need one" in Creole. This was only a difference of one word – "wish" for "need." But it critically altered the message by suggesting that the right to appointed counsel depended not on Mr. Youte's personal wish, but rather some type of showing of "need." *See United States v. Perez-Lopez*, 348 F.3d 839, 847-48 (9th Cir. 2003) (*Miranda* warning translated from English to Spanish deficient where it stated "you have the right to solicit the court for an attorney if you have no funds," which was "constitutionally infirm because it did not convey to him the government's *obligation* to appoint an attorney for indigent accused. To be required to 'solicit' the court, in the words of Torres's warning, implies the possibility of rejection."); *United States v. Botello-Rosales*, 728 F.3d 865, 867 (9th Cir. 2013) (warning translated from English to Spanish stating, "If you don't have the money to pay for a lawyer, you have the right. One, who is free, could be given to you," found deficient where detective used the word "libre" for "free," "libre" in

Spanish translates to "free" as in "being available or at liberty to do something," and the "phrasing of the warning – that a lawyer who is free could be appointed – suggests that the right to appointed counsel is contingent on the approval of a request or on the lawyer's availability, rather than the government's absolute obligation").

The Magistrate Judge failed to address this deficiency head on and instead turned to the broader view that Mr. Youte apparently understood some English and SA Philippe spoke some Creole. DE27:17-18. But even if Mr. Youte did have a basic understanding of English that is beside the point because this portion of the *Miranda* waiver was read to Mr. Youte by SA Philippe in Creole. DX 1:7. And even if SA Philippe may be somewhat proficient in Creole, there is no factual dispute that he ended this portion of the advice of rights with the phrase, "If you need one." Tr. 40. As a matter of law that rendered the advice of rights deficient.

In sum, the agents' post-arrest advice of *Miranda* rights was deficient and thus Mr. Youte's waiver of his *Miranda* rights was invalid.

For the foregoing reasons, the Court should sustain the above factual and legal objections and grant the motion to suppress as to the physical evidence and Mr. Youte's post-arrest statements.

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CERTIFICATE OF SERVICE

I HEREBY certify that on May 9, 2017, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or *pro se* parties identified in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Alex Arteaga-Gomez

APPENDIX H

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 17-20178-CR-WILLIAMS

UNITED STATES OF AMERICA

v.

HUBERT YOUTE,

Defendant.
_____/

UNITED STATES OF AMERICA'S RESPONSE IN OPPOSITION TO DEFENDANT'S OBJECTIONS TO REPORT AND RECOMMENDATION ON MOTION TO SUPPRESS

The United States of America, by and through the undersigned Assistant United States Attorney, hereby files this Response to the Defendant's Objections to Report and Recommendation on Motion to Suppress ("Objections") (DE37), and respectfully requests that this Court enter an order adopting Magistrate Judge Torres' Report and Recommendation (DE27).

Defendant objects to two of Magistrate Judge Torres' legal conclusions. First, Defendant claims that the Magistrate Judge erred in concluding that the search of Defendant's cabin, as well as the detergent box found in his cabin, was a routine border search, not requiring reasonable suspicion, and that in any event, reasonable suspicion existed to open the detergent box. As the Magistrate Judge held, however, binding Eleventh Circuit law is clear on this issue, and border searches such as the search at issue here, are not subject to any requirement of reasonable suspicion. *U.S. v. Alfaro-Moncada,* 607 F.3d 720 (11th Cir. 2010). Nor is Defendant correct that the opening of a detergent box is the kind of "highly intrusive" search that requires reasonable suspicion, even at the border.

Second, Defendant objects to the Magistrate Judge's finding that Defendant was adequately apprised of his *Miranda* rights. As he did in arguing the motion to suppress, Defendant nitpicks the *Miranda* warnings given to the Defendant, but the Magistrate Judge correctly analyzed the question based on the "totality of the circumstances" as required by Eleventh Circuit law. The Magistrate Judge properly found that the evidence, especially the video recording of the *Miranda* warnings, shows that Defendant's waiver was knowing and voluntary. In addition, the Magistrate Judge properly found that *unrebutted* evidence showed that the Defendant could understand conversational English. While Defendant claims that the Magistrate Judge "overstates" the evidence regarding Defendant's ability to understand English, the Magistrate's factual findings on this issue were amply supported by the evidence

RELEVANT FACTS

On or about February 27, 2017, an outbound customs inspection of the M/V Doris T, a 259' coastal freighter, was conducted just prior to the vessel's scheduled departure from the United States to Port-de-Paix, Haiti. At approximately 10:15 am, the search team, consisting of Customs and Border Protection ("CBP") officers as well as members of the Hallandale Beach Police Department and Homeland Security Investigations ("HSI"), arrived at the vessel.

Once all eight crew members were assembled in the rear of the vessel, CBP officers advised the crew that an outbound search of the vessel would be conducted. Crew members, including Defendant, were then individually escorted to their assigned cabins, where they were asked if they were transporting in excess of $10,000 in U.S. currency or foreign equivalent currency or any firearms or ammunition.

After Defendant was escorted to his cabin, he was asked, in English, if he was transporting

more than $10,000 in U.S. currency. Defendant responded in the negative, and did not manifest any confusion or inability to understand the question. When specifically asked if he was carrying in excess of $10,000 for himself or anyone else, Defendant retrieved approximately $2,000 in U.S. currency that had been inside of a pillowcase on his bed. Again, Defendant did not manifest any confusion or inability to understand the question. Defendant was next asked if he had any additional currency. Defendant then removed approximately $42 from the pocket of the pants he was wearing. Defendant was asked again if he had any other currency on his person or in his cabin. Defendant then produced an additional $200 from a pair of pants that had been slung over a chair in Defendant's cabin. Defendant was asked yet again if there was any additional currency, and Defendant replied that there was not. At this point, Defendant was asked to stand in the hallway leading to his cabin as officers searched it. At no point did Defendant manifest any confusion or inability to understand the officer's questions or instructions, which were all in English.

During the search of Defendant's cabin, officers discovered a Tide detergent box on a shelf. The box itself had been wrapped in tape. *See* Exhibit 2.[1] Cutting the tape with a knife revealed that the box contained four packages of currency that had been wrapped with tape and paper. The packages contained approximately 37 individual bundles of currency totaling $36,930.[2]

When Defendant saw that officers had found the Tide box, Defendant stated aloud, in English, that the officers should talk to "Jeff." Defendant was subsequently escorted off the

[1] References are to the Exhibits used during the Suppression Hearing, also attached hereto.

[2] The Tide box contained $36,940 in bills, however a later scan of the currency determined that one of the ten dollar bills was counterfeit, resulting in a total of $36,930 in valid U.S. currency.

vessel and told, in English, that agents would be questioning him at a later time. Defendant continued to comment, in English, that they should talk to "Jeff."

Defendant was subsequently transported to the HSI office in Miami to be interviewed. The interview began at approximately 2:45 p.m., and was conducted by HSI Special Agents Victor Lopez and Jacque Philippe. As demonstrated by the video recording of the interview, at the outset, Defendant was given his *Miranda* rights in Creole. *See* Exhibit 3A. SA Philippe translated each line of an English language *Miranda* form into Creole for Defendant. SA Philippe asked Defendant if he understood that particular warning. Defendant verbally indicated that he understood each right, and marked each line with a "plus sign" to manifest his understanding. Because Defendant claimed that he could not write or sign his name, he was asked to mark the signature line of the form with another "plus sign." *See* Exhibit 1.

During the first interview, Defendant stated that he is the only crew member who lives in the cabin where officers found the Tide box, and everything in the cabin belonged to him except the money found inside the Tide box. Defendant said that an individual known to him as "Jeff" had given him the Tide box sometime on the afternoon of February 26, 2017. Defendant said he took the box to his cabin and placed in the location where officers found it. Defendant admitted that he knew the box contained money, but said that "Jeff" did not tell him how much money the box contained. Defendant said he was supposed to take the money to Haiti, and that once in Haiti, "Jeff" would pick up the box from Defendant. During the interview, Defendant verbally consented to a search of his cellphone, a Samsung flip phone, and also marked the signature line of a written consent form, again with a "plus sign." The interview concluded at approximately 3:30 p.m.

Later that evening, at approximately 8:54 p.m., Defendant was interviewed again, this time by Special Agents Quinquilla and Philippe. The interview was again recorded by video and conducted in Creole, with SA Philippe translating. Prior to the second interview, Defendant was reminded of his *Miranda* rights, and agreed again to waive those rights and answer questions. *See* Exhibit 4A. During the second interview, Defendant said that he did not know where "Jeff" got the money that was in the Tide box.

ANALYSIS

I. The Magistrate Judge Properly Found That the Search of Defendant's Cabin was a Routine Border Search, Not Requiring Reasonable Suspicion.

Under the "border search" exception to the warrant requirement, routine border stops and searches of persons, luggage, personal effects, and vehicles may be conducted without probable cause or reasonable suspicion. *United States v. Montoya de Hernandez*, 473 U.S. 531, 537 (1985) (executive branch has plenary authority to conduct warrantless routine searches to regulate the collection of duties and to prevent the introduction of contraband). Most searches of persons, luggage, personal effects, and vehicles are sufficiently nonintrusive to qualify as routine border searches. *Almeida–Sanchez v. United States*, 413 U.S. 266, 272 (1973). The border search doctrine applies equally to searches of persons and property exiting the United States as to those entering the country. *See United States v. Hernandez–Salazar*, 813 F.2d 1126, 1137–38 (11th Cir.1987) (noting that "[e]very circuit that has considered the question has ruled that the rationales for the 'border exception' apply both to incoming and outgoing persons and instrumentalities" (citations omitted)).

In *United States v. Alfaro–Moncado*, 607 F.3d 720, 720 (11th Cir. 2010), the Eleventh Circuit made clear that the border search exception applies to a crew member's cabin. Noting

that "any expectation of privacy a crew member has in his living quarters is weaker when those quarters are brought to the border of this country," *Id.* at 732, the court held that the suspicionless search of a crew member's cabin on a foreign cargo ship docked on the Miami River was not a violation of the Fourth Amendment.

The Magistrate Judge properly found that *Moncado* is binding authority and controls this case. Because Defendant's cabin was searched pursuant to the border inspection of a foreign cargo ship, there was no requirement of suspicion or a warrant.

While Defendant appears to accept that the search of his *cabin* did not require reasonable suspicion based on *Moncada,* he nevertheless objects to the Report and Recommendation on the grounds that the search of the Tide box itself required reasonable suspicion because it was "destructive." As the Magistrate Judge found, opening the Tide Box with a knife was not "destructive" because the box could have been resealed (DE27 at 8).

Moreover, none of the cases cited by Defendant support that view. While *Moncada* recognizes that reasonable suspicion may be required, even at the border, for "highly intrusive searches of a person's body, such as a strip search or an x-ray examination" *Moncada*, 607 F.3d at 729, the Magistrate Judge correctly observed that this elevated standard is only applicable due to the "level of indignity" involved in those searches (DE27, at 8). The Magistrate Judge noted that the search of the Tide box was much more akin to the search of locked luggage than to a strip search, or to the drilling into the frame of an auto-body trailer at issue in *United States v. Rivas*, 157 F.3d 364, 367 (5th Cir. 1998), a case relied upon by Defendant. Further, even the Ninth Circuit has rejected the claim that forced opening of a sealed container was tantamount to an intrusive destruction of property. *See United States v. Seljan*, 547 F.3d 993, 1002-04 (9th Cir.

2008). Defendant's reliance on *United States v. Ross*, 456 U.S. 798 (1982) is also misplaced. In *Ross*, the Supreme Court made clear that a "lawful search of a fixed premises generally extends to the entire area in which the object of the search may be found and is *not* limited by the possibility that separate acts of entry or opening may be required to complete the search." *Id.* at 820-21 (emphasis added). This was the rule that *Ross* applied to all containers, whether "worthy" or "unworthy." *Id.* at 822. Under the logic of *Ross*, where, as here, the officers were lawfully searching the Defendant's cabin for contraband, including large amounts of currency, they were authorized to search any containers within the cabin in which currency might have been found, such as the Tide box.

The Magistrate Judge also properly noted that Defendant's proposed standard would completely undermine border search exception (Tr. 77).[3] Under Defendant's proposed framework, all that would be needed to prevent a routine customs inspection would be to seal one's luggage before bringing it into or out of the United States.

Finally, the Magistrate Judge correctly found that even assuming, *arguendo*, that reasonable suspicion were required for the search of the Tide box, there was reasonable suspicion based on the facts of this case. The evidence showed that contrary to his behavior during previous inspections, during this inspection, "his body language was not the same and his face looked like a little like he was upset that we were there" (Tr. 12-13). The evidence also showed that during routine questioning inside his cabin, defendant behaved strangely, producing piecemeal various amounts of U.S. currency that were located in his cabin (Tr. 14-16). Further, the evidence

[3] "Tr." refers to the draft suppression hearing transcript attached as Exhibit 1 to Defendant's Objections.

showed when the Tide box was found, it was not in its usual condition, but rather was "full of tape around it" (Tr. 17). Obviously, such unusual wrapping, especially when combined with Defendant's unusual behavior, raised a reasonable suspicion that there was something other than detergent inside the Tide box, and the Magistrate Judge properly so held.

While Defendant notes that he "may have been upset for all sorts of innocent reasons" and that the tape was merely an effort to "keep a container's contents private" (DE37 at 6), that is not the only explanation for this evidence. Defendant's efforts to contrive an innocent explanation does not negate the existence of reasonable suspicion based on those facts.

Accordingly, the Magistrate Judge properly found that the search of Defendant's cabin, including the Tide box found within the cabin, was nothing more than a routine border search, not requiring reasonable suspicion, and even if reasonable suspicion were required, the officers had it. The Magistrate Judge's Report and Recommendation should be adopted.

II. The Defendant Knowingly, Intelligently, and Voluntarily Waived his *Miranda* Rights

A. The Magistrate Judge Properly Applied the Appropriate "Totality of the Circumstances" Analysis.

Defendant also objects to the Magistrate Judge's finding that Defendant voluntarily waived his *Miranda* rights before his recorded statement.[4] As the Magistrate Judge correctly noted, the test for whether a defendant has knowingly and voluntarily waived his rights is based on the "totality of the circumstances" (DE27 at 16) (*citing Moran v. Burbine*, 475 U.S. 412, 421). *See*

[4] Defendant does not object to the Report and Recommendation's rejection of Defendant's motion to suppress his statements to customs officers prior to his arrest. As the Magistrate Judge properly found, Defendant was not in custody at this point, and no *Miranda* warnings were required (DE 27 at 15).

also United States v. Barbour, 70 F.3d 580, 584 (11th Cir. 1995). It is not appropriate, as Defendant proposes, to "cherry pick" certain words in an effort to support a "talismanic incantation" that *Miranda* itself said was unnecessary (DE27 at 18) (citing *California v. Prysock*, 453 U.S. 355, 358 (1981).

Because the *Miranda* warnings were recorded, the Magistrate Judge had direct access to the "totality of circumstances" relating to the Defendant's interview. The Magistrate Judge watched the video and observed the defendant's demeanor. The completeness and accuracy of the *Miranda* warnings given to Defendant, as well as his knowing and voluntary waiver of his rights, are amply demonstrated by the video. It shows that SA Philippe translated into Creole each of the rights, taken from the standard Miranda form, and that Defendant acknowledged each individual line by marking that line with a "plus sign" (see Government's Exhibit 1). Thus, Defendant advised in Creole of his right to remain silent, that anything he said could be used against him in court or other proceeding, that he had the right to consult an attorney before making any statements or answering any questions, that he had the right to have an attorney present during all questioning, that an attorney would be appointed if he could not afford one, and that he had the right to stop questioning at any time or stop the questioning for the purpose of consulting an attorney. As the Magistrate Judge noted,

> A review of the video recorded during the reading of the Miranda rights shows that Defendant had no issues communicating with Agent Philippe in Creole. Defendant appears attentive and responsive to each question posed to him by Agent Philippe, and at no point does he show confusion as to each individual statement made in Creole.

(DE27 at 17).

The additional circumstance relating to the Defendant's interview was the fact that the Defendant could understand conversational English. As the Magistrate Judge noted, this is a factor which is properly included in the "totality of circumstances" analysis (DE27 at 17) (citing *United States v. Jean*, 285 F. App'x 651, 653 (11th Cir. 2008). The undisputed evidence below was that Officer Rodriguez had conducted a number of customs interviews with Defendant, in English, and that Defendant had never shown any difficulty understanding him (Tr. 12). In addition, on the day in question, Officer Rodriguez had another customs interview with Defendant, in English, and that the Defendant did not express any difficulty understanding or confusion about what was being said (Tr. 14). The evidence also showed that after the money was discovered, hidden in the Tide box, Defendant said, in English, to the searching officers, that they should talk to "Jeff" (the person who had given him the money) (Tr. 19). There was also evidence, from Agent Philippe, that during the interview, there were times when Defendant answered questions posed in English before they had been translated (Tr. 44-45)[5]

B. Defendant's Attempts to "Cherry-Pick" The *Miranda* Warnings Lack Merit.

In his Objection, Defendant raises the same three arguments made below regarding the validity of the *Miranda* warnings. The Magistrate Judge properly rejected each one.

1. Use of the English Word "Use."

First, Defendant argues that the *Miranda* warnings did not advise the Defendant that anything he said could be used to incriminate him (DE37 at 4). This argument fails because the transcript of the video makes clear that SA Philippe said "[a]nything you tell us, we can use it in

[5] The portion of the video played during this part of Agent's Philippe testimony was time code 2:16 through 3:04.

court." *See* Exhibit 3A, at 7. Defendant's argument is that because SA Philippe used the English word "use" instead of a Creole word, the Court should pretend that nothing at all was said, and the absolute silence came between the words "can" and "it." The Court should reject such absurd reasoning, as the Magistrate Judge did. First, as discussed above, the unrebutted evidence was clear that the Defendant has an understanding of conversational English, and "use" is one of the most common English words. Second, the video shows that the defendant was not confused by SA Philippe's statement at this point in the transcript, and did not ask for clarification, demonstrating that the Defendant understood what was being said. Finally, contrary to Defendant's proposed fiction that silence should replace the word "use," the fact is that that something was said, indeed, something which clearly related to the word "court."[6] Accordingly, the context of the sentence makes clear what was being said. At a minimum, there was enough information to alert Defendant that he could ask for clarification, if he had been confused.

2. "Before" v. "After"

Defendant's second argument is that the *Miranda* warnings suggested that Defendant had to give a statement before counsel could be appointed. Defendant's argument is based on his proposed transcript of the recorded video.[7] Specifically, Defendant claims that after advising Defendant that he had the right to contact an attorney "before" making any statements, that SA Philippe then said the words "After you make any statement."

[6] Defendant does not dispute his understanding of the word "court" at this part of the *Miranda* warnings.

[7] Significantly, Defendant's expert admitted that the decision to alter the transcript of the *Miranda* warnings was not his own, but rather was made by the "office of the defender." (Tr. 59).

The Magistrate Judge properly rejected this argument. The video recording, as the Magistrate Judge heard, demonstrates beyond doubt that SA Philippe did not utter the Creole word for "after" (aprie) – he said the Creole word for "before" (avan) (Tr. 36, 39). SA Philippe also testified that he said the word "avan" and not the word "aprie" (Tr. 39-40).[8] Accordingly, the factual premise underlying Defendant's claim is simply wrong.

Defendant's proffer of an "expert" in Creole to support their "before vs. after" argument was irrelevant. The issue was not the proper translation of what SA Philippe said; the issue was what SA Philippe said in the first place. The Defendant's "expert" was in no better position than any other listener to opine on what sounds came from SA Philippe, and on the question of what SA Philippe actually said, SA Philippe's unrebutted testimony was far more probative. Moreover, the evidence was undisputed that SA Philippe was not speaking spontaneously – he was translating an English-language *Miranda* rights form into Creole (Exhibit 1). It strains credulity that having properly translated the word "before" into Creole in one sentence, would mistakenly translate that word into "after" in the very next sentence. Logic and common sense, as well as the video itself, show that SA Philippe merely repeated the same sentence twice, using the word "before" each time.

3. Use of the phrase "if you need."

Finally, Defendant claims that the *Miranda* warnings suggested that Defendant would have to make some showing of "need" before counsel could be appointed. This argument, too, is not supported by the record. The standard Miranda form SA Philippe was translating contains the

[8] Notably, the Defense chose not to cross-examine SA Philippe on this point.

phrase "If you cannot afford an attorney, one will be appointed for you before any questioning, *if you wish.*" *See* Exhibit 1 (emphasis added). Defendant concedes that this phrase was translated as "If you don't have . . . If you *cannot pay an attorney yourself* [ph]. They will get you one before [pause] . . [Beeping noise] If you *cannot get an attorney on your own* then they will appoint you one before if you need one." *See* Exhibit 3A, at 7 (emphasis added).

Defendant's argument is thus based on the fact that SA Philippe translated the term "if you wish" from the standard *Miranda* form into "if you need" in Creole. But in the context of the entire sentence, SA Philippe's meaning was clear. SA Philippe used the terms "cannot pay an attorney yourself" and "cannot get an attorney on your own" in the same sentence. In this context, the use of the word "need," merely refers back to previous phrases, and does not suggest some additional showing beyond indigence. The Magistrate Judge properly rejected Defendant's effort to "cherry pick" this word, out of context.

The error in Defendant's hyper-literal approach is demonstrated by applying it to the original English-language form. Under Defendant's theory, the use of the phrase "if you wish" at the end of the standard *Miranda* form would itself be problematic, as it suggests that a defendant will only obtain appointed counsel if he or she affirmatively "makes a wish." Obviously, that is not the meaning conveyed by the form, any more than the meaning conveyed by SA Philippe was that Defendant would have to make some abstract showing of need before counsel could be appointed.

CONCLUSION

For the foregoing reasons, the undersigned respectfully requests that this Court deny the Defendant's Objections and enter an order adopting Magistrate Judge Torres' Report and Recommendation.

Respectfully submitted,

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By: /s/ *Robert Juman*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing document with the Clerk of the Court using CM/ECF on May 15, 2017.

/s/ *Robert Juman*
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Assistant United States Attorney

APPENDIX I

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NUMBER 17-20178-CR-WMS

UNITED STATES OF AMERICA

vs.

HUBERT YOUTE,

Defendant

TRIAL PROCEEDINGS HELD 5-23-2017
BEFORE THE HONORABLE KATHLEEN M. WILLIAMS
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

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I N D E X

THE COURT: Please be seated, everyone.

THE COURTROOM DEPUTY: This Court calls Case No. 17-20178-CR-WMS, United States versus Hubert Youte.

Counsel, please state your appearances.

MR. LUKENHEIMER: Good morning, Your Honor, Kurt Lukenheimer along with Robert Juman on behalf of the United States.

MR. ARTEAGA GOMEZ: Good morning, Your Honor, Alex Arteaga Gomez and Bunmi Lomax on behalf of Mr. Youte who is present and using the services of the Creole interpreter.

THE COURT: Good morning, everyone. All right. We are here this morning to discuss the defendant's objections to the Magistrate's report and recommendation regarding the defendant's motion to suppress.

The defense has objected to the search of Mr. Youte's cabin and any fruits derived from that search, as well as any statements taken by Mr. Youte as being improperly Mirandized due to language issues.

I have read all the submissions; I have read the cases cited by the defense. I will allow both parties the opportunity to present any additional argument you would like on both issues.

At this point in terms of where I am and the questions I have, all have to do with the statements. So let me ask my questions and I will allow you, Mr. Arteaga-Gomez, to present

any points and of course the Government may respond.

MR. ARTEAGA GOMEZ: Yes, Your Honor.

THE COURT: I did not see this in the record, so perhaps I missed it -- or perhaps it was never discussed -- does HSI have a Rights form in Creole that can just be read to a Creole speaker by a Creole speaking agent?

We of course have a literacy issue, so even if there had been a form Mr. Youte would not have been able to read it, himself, but then there would be no question of deviating or extemporizing in terms of words.

So, was a form like that used here?

MR. JUMAN: Your Honor, my understanding is a form like that exists; they just did not have it that day.

THE COURT: Well, they should have it everywhere and at all times, especially at the docks, because then we would not be having the discussion we are about to have in terms of the translation.

Mr. Arteaga-Gomez, I am looking at the Miranda issue, and there's only one problem I see -- and in all candor, I think it might be cured.

The only problem I see is when Agent Felipe says a lawyer will be appointed if you need one as opposed to if you can't afford one; setting up that idea of a conditional right that was discussed -- and I forgot the case -- where they talked about you may solicit the Court.

MR. JUMAN: I think that was Perez Lopez.

THE COURT: Perez Lopez; right. And you also cite Botello-Rosales, which I guess goes to the idea of the term can be a critical component of a rights advice.

Here's where I get kind of stuck; he does use the word need unnecessarily. I don't know why you just don't stick to the form.

But before he says need, Agent Felipe says, if you cannot pay an attorney they will get you one. And then after he says need, he said if you decide to answer any question right now you still have the right to stop -- and when we are asking you questions -- so you can consult with an attorney.

So while the word need can have some ambiguity, it seemed to have be cabined with a very clear, we will get you a lawyer, and if you want one now we will get you one now.

So, Mr. Arteaga Gomez, how do you square those comments with the cases you have cited?

MR. ARTEAGA GOMEZ: Because that comment, so you can consult with an attorney, it may be referring to the right of consultation, but it is not clearly referring to the right to be provided an attorney if he cannot afford it.

They told him he could consult an attorney, but whether -- he doesn't have -- we know he doesn't have the means for an attorney, the financial means for an attorney.

So I think that in that instance it's not addressing

the separate Miranda advice; which is the right to be provided the attorney. If he has an attorney nearby, if he can call one from his phone, yeah, he can consult with one; what if he can't afford one.

What if he doesn't have an attorney on retainer, what then? Is there a procedure for getting you an attorney, and what do they advise him about that?

They advise him that they will appoint you one before; and then it's if you need one. This is a person -- in other cases where these issues come up there is some evidence that perhaps the person has been arrested before, been read Miranda before, has some experience in the American Justice System.

In this case there is no evidence in the record that Mr. Youte has ever gone beyond the dock in the United States, never been arrested in the United States, never been read any rights in the United States.

He has never resided in the United States and never been -- has no understanding of the American culture and even of what Miranda is.

So in this context this is a guy hearing this process for the very first time and being told we will get you one if you need one.

And I think Perez Lopez and Botello Rosales are very important cases because they point out the difference of one word; that it can be the difference of the admissibility of the

statement.

And that these individuals words matter. So that is what I believe is important as to this issue of consent as well as consulting an attorney.

I think the advice of the right to consult counsel is still problematic for the second argument I made, the before and after issue.

But even if the Court were to find that -- reject that argument -- I don't think it solves the issue of unqualified right to counsel upon a showing of -- unqualified right to appointed counsel upon a showing of indigency.

THE COURT: All right. Let me turn to the Government. Mr. Juman, I know that you have read Perez Lopez. So, why are we extemporaneously making it up as we go along?

MR. JUMAN: We certainly regret there was not a Creole language form in use that day. That is obviously the better procedure, but under the circumstances this is not a situation like in cases -- I believe Perez Lopez -- where Perez Lopez they were reading from a card.

In other cases cited by the defendant, like the Street case where the agent is speaking extemporaneously, here the agent was in fact translating a form in front of him.

THE COURT: Do we have that form by the way?

MR. JUMAN: Yes, Your Honor. It is Exhibit 1.

THE COURT: Could you pass that form up to me. Thank

you.

MR. JUMAN: I will give Your Honor a moment to review the document.

THE COURT: Okay. In the transcript where is the, you have the right to -- I am looking on Document 35-1, page seven of 11.

MR. JUMAN: Yes, Your Honor.

THE COURT: So, you have the right to remain silent, anything you say, anything you tell us, we can use in court.

I know there is some discussion about that.

You have the right to contact an attorney, as opposed to the right to consult an attorney, before making any statements or answering any questions.

Agent Felipe is not following the script.

Then, you have the right to have an attorney present with you while you are being questioned; okay.

If you cannot pay an attorney, one will be appointed; they will get you one. And then before; if you need one. Not before questioning; or if you need one.

Then he says if you decide to answer questions you can stop so you can consult with an attorney.

But in several key components he is either not translating what was on the form or kind of merged it into another standard right.

So my question is why?

MR. JUMAN: Your Honor, I think -- the answer to the question why is because Agent Felipe is a Creole speaker who is attempting to translate an English language document into Creole for the benefit of Mr. Youthe.

THE COURT: Right.

MR. JUMAN: It is not a verbatim transcription that is read -- I believe it would have been better if there had been a previously translated form.

And I would cite Your Honor to United States versus Gabby; which is the 11th Circuit statement on the topic. It is not a matter of a rote incantation; it is a matter of whether the message is conveyed.

Here what we have is two things. We have -- the agent was translating a line from the standard form that says if you cannot afford an attorney one will be appointed for you before any questioning if you wish.

And as I said in my papers, it is clear that what the agent was doing was trying to translate that phrase, if you wish, which is a bit of an idiomatic phrase in English.

I would point out from the transcript he does not just translate it as if you need one; he then says three words which no one has mentioned yet, if you want, and so the premise of the defense that somehow they were setting up some kind of an abstract --

THE COURT: Slow down.

MR. JUMAN: That would dissipate because of the next -- the very next words -- where the agent said, if you want, and all that was necessary was for the defendant to want it; which has been conveyed by the form if you wish.

Again, a literal translation would have led to the absurd result that the defendant would have had to make a wish so then--

THE COURT REPORTER: I'm sorry, Judge.

THE COURT: You need to slow down so that Ms. Sanders can make a record of your argument.

MR. JUMAN: I apologize to Ms. Sanders. The point was to translate for the defendant that he could have an attorney if he wanted one. That he could have an attorney if he wanted one, and if he could not afford one.

And that is amply conveyed. If Your Honor refers to the very beginning of that translation, the agent says if you cannot pay an attorney yourself they will get you one before; then there is a pause.

That is an unconditional statement that if you cannot pay an attorney they will get you one; no conditions based on on that.

Then there is the beeping noise, and the agent proceeds, if you cannot get an attorney on your own then they will appoint you one before if you need it.

That is an attempt to translate the if you wish from the form. And then he dissipates any notion of condition by saying if you want. And then as, Your Honor pointed out, he proceeds.

And in reading the remainder of the form, he makes clear that the defendant has the right at some point to stop the questions if he wants to consult with an attorney.

And Your Honor's concern about the translation of the word consult with contact earlier -- again to the extent it is a concern, it is remedied here; it has been translated into consult.

So, again, in the aggregate and under the totality of the circumstances, the message that is being conveyed to the defendant is here he has a right to not just call an attorney and say hello but to actually meaningfully discuss the issues with an attorney if he wants to.

THE COURT: All right. Is there anything else the Government wishes to bring out on the topic of the Miranda warnings?

MR. JUMAN: Nothing further, Your Honor.

THE COURT: So this form, and this 351, was the first recitation of the Miranda by Agent Felipe, and then the second interview was there a second recitation of Miranda?

MR. JUMAN: No, Your Honor, the second interview -- the form was shown to the defendant. As Your Honor is aware the

defendant's marks are on the form.

THE COURT: Right.

MR. JUMAN: At the request of Agent Felipe, during the first interview and the second interview he is shown the form, and Agent Quinquilla and Agent Felipe remind him that the same principles apply to this renewed interview.

THE COURT: What is Mr. Youte's response? Obviously he can't read the form.

MR. JUMAN: During the second interview?

THE COURT: Yes.

MR. JUMAN: The question at the end of the process -- this is Exhibit 4 A -- is the transcript from the suppression hearing where Agent Felipe says, do you understand what I have said, and Mr. Youte says yeah in English in response.

THE COURT: What has he just said?

MR. JUMAN: The full portion he says -- so, Agent Quinquilla says to Agent Agent Felipe, just remind him he is still under oath. I think he means the same principles apply.

And Agent Felipe says, let me show him this paper, referring to the advice of rights. And then Agent Qunquilla says he still has the same rights he has previously.

Agent Felipe then says to Mr. Youte, okay, do you remember when we took this paper? It's still the same thing; it has not changed. Mr. Youte says, hmm. Agent Felipe says, you can say whatever that is on this paper, and if you don't

want to this paper still applies. And Mr. Youte says, hmm. And Agent Felipe says, do you understand what I have said? And Mr. Youte says yeah.

THE COURT: How long between the first interview and the second interview?

MR. JUMAN: The first interview took place between 2 o'clock and 3 o'clock in the afternoon, and the second interview took place approximately 8:54 p.m.

THE COURT: Thank you Mr. Juman. Mr. Arteaga-Gomez, any additional argument?

MR. ARTEAGA GOMEZ: Just briefly, Your Honor. With respect to the Gaddy decision, the 11th Circuit Gaddy decision, mentioned by Mr. Juman and cited by Magistrate Judge Torres; the quote Magistrate Judge Torres reads in the report and recommendation from Gaddy is dicta as applies to the issue Your Honor has to decide.

Gaddy was a case that was not an analysis of the sufficiency of a translation or the sufficiency of the reading of Miranda Warnings by an agent, it dealt with if a person that appeared to have serious mental health issues full appreciated the warning when he waived.

So it was not an analysis of what was communicated in terms of no specific Miranda Rights the way that the Botello and Perez decisions do.

Going back to the Court's original question to me about whether the comment about consulting with an attorney cures this issue about need, I think Botello is instructive -- Botello is instructive because in Botello -- I am looking at page 867 of the decision -- they -- the Court quotes what was told by the agent in Spanish to the defendant.

There the agent told the defendant you have the right to talk to a lawyer and have him present with you during the interview.

But the Court still found that the statement should be suppressed, and the conviction should be reversed because the subsequent advice about the un-qualified right to appointment of counsel was deficient.

So I think it is a similar situation to here where Mr. Youthe was told, like Mr. Botello, you can consult with an attorney; but it still does not solve the problem of advising him that he has an un-qualified right to an appointed attorney provided that he qualifies financially.

THE COURT: All right.

MR. ARTEAGA GOMEZ: That's all I have to say on the issue of -- the need issue, Your Honor.

Our other point, which is our lead point, about the deficiency of the warning was what was said at the initial part of the advice, which was anything you tell us we can use it in court.

There is an issue about whether Mr. Youte understood the word use because that word was said to him in English and not in Creole.

And I think both sides have fleshed out that factual issue about whether he understood it, but I don't think that is dispositive if the Court were to find that Mr. Youte were to understand the word used in that context.

It still is deficient under the Street decision, which is a decision from the 11th Circuit, a decision that we cited where the defendant was told in English -- and there was no translation issue in that case -- he was told you have the right to remain silent and you have a right to talk to a lawyer.

And because the defendant was not told the consequence of waiving that right to silence Judge Carnes found the statement should have been suppressed.

THE COURT: In Street there was no discussion about what would happen. Here apparently there is some effort to tell him that -- Mr. Youte -- that the statements will be used.

MR. ARTEAGA GOMEZ: And I think that is a fair point. Street is perhaps an easier case than this, but still the Moran decision and the Fair decision -- those are the seminal Supreme Court decisions -- make clear that a proper waiver involves a showing by the Government that the person appreciates not just the right to silence but the consequence of waiving it.

In this context how can this man understand, given his experience in the American Justice System, given his experience in American society -- his experience being questioned by law enforcement, all of which is zero, that he can understand there is going to be a -- there could be a criminal court proceeding and that the statements would be used to incriminate him later on.

For all he knows those statements could be used in any number of various ways in court. Maybe to take the boat's license away for traveling with un-declared money; maybe to cause some Immigration consequences to Mr. Youte or others.

Maybe to seize the money or forfeit the money. Maybe to investigate other people. It could be used in all sorts of ways. And it's not necessarily clear by just saying the words use in court that it is being conveyed to him used to prosecute you, incriminate and imprison you as a result of a court proceeding.

THE COURT: Obviously I am concerned about this, and let me tell you why, we have a gentleman who cannot read or write; he does not speak English.

There is a transcript that says another agent on other occasions spoke to him in English. There is no development of what those encounters were.

It could have been hi or just -- I am sure it was a little more, but there is no development of Agent Rodriguez on

page 12 -- I had seen him; did you speak to him? Yes.

What language did you use? English.

MR. JUMAN: Your Honor, if I may that context was previous Customs inspections; that is when Officer Rodriguez was describing his previous Customs inspection.

THE COURT: Right, but he did not say I asked a series of questions, and these are the questions.

So now we get to Mr. Youte being questioned by Agent Felipe, who does not adhere strictly to the statement of rights because he is struggling to translate not having the form he should have had with him.

So what here let's me know that Mr. Youte was sufficiently apprised of his rights under Miranda that the statements were in fact voluntary?

These cases that the defense cite are not squarely on point, but neither are the cases the Government cites. In instances such as this where you have someone -- that is discussed in the cases given by the defense -- someone who does not read or write you have to be especially careful; and I don't see that here.

MR. JUMAN: Your Honor, the totality of the circumstances in this case include the video itself, which Magistrate Judge Torres reviewed.

THE COURT: I did as well.

MR. JUMAN: Which shows the defendant's demeanor, his

lack of confusion -- as the cases point out -- his lack of any questions, his willingness to participate is made manifest by his body language, in addition to the words that were used.

There could not be any better totality of the circumstances presented to the Court other than a videotape allowing Your Honor to be a fly on the wall. There is no manifestation of confusion.

We have in addition to Officer Rodriguez further questioning -- we have the questioning on the day of the 27th when he speaks to the defendant in English without any hesitation or confusion.

The defendant knows that he is being asked about money. He produces money, not just the money hidden in the Tide box; his use of English voluntarily when the Tide box was found.

You combine that with the video and the transcript and that provides the totality of the circumstances that Magistrate Judge Torres properly found shows the message was conveyed.

He properly rejected a talismanic adherence to specific words. He looks at the transcript and he reads the transcript and sees the message that was conveyed in the case of Hughes.

I am a little taken aback because the argument now being made is even if the word had been correctly translated as used it would still be a problem; that is not the argument made

to Magistrate Judge Torres below. Below we argued solely the premise that because use was not in Creole and was in English we should redact it and ignore the word, and assume that the sentence was read anything you tell us we can, blank, it in court. And based on that there was an insufficient warning.

We are now being told that the word use was probably understood; but that is not enough. That was not the argument made below, and I don't think it is proper to raise it at this late stage.

But even so, the fact that the defense can come up with alternative interpretations did not change the fact that -- does not change the fact Agent Felipe adequately presented the defendant his rights.

The defendant understood the statement could be used in court. In that circumstance as Gaddy says -- and I do not believe that this point is dicta -- the defendant need not understand every possible consequence; he need only --

THE COURT: You really have to slow down.

MR. JUMAN: And in order for it to be knowingly and intelligently made he simply needs to understand here that his statement could be used in court.

As much as counsel tries to portray the defendant as ignorant he, in fact, travels frequently -- the evidence shows -- or we will be presenting evidence that he has flown through the Miami Airport on his own several times.

And so he does not just stay on the dock as defense counsel would have you believe it.

And I think the totality of the circumstances includes both the defendant -- we concede English is not his first language; he is a native Creole speaker.

He may not be literate, but he has been working on the ships on the river for ten years. He has been through Customs inspections numerous times.

And you combine that with the video of his demeanor, and the totality of the circumstances does provide adequate guarantees that the waiver was knowing and voluntary.

THE COURT: All right. As to the defendant's objection regarding the report and recommendation and the search of the cabin, I find that Magistrate Torres correctly determined this was a border search.

And it was not of the level of evasiveness or intrusiveness such that it should be suppressed as discussed in the defendant's motion.

I think the analogy used by Magistrate Torres was more apt as far as luggage being opened. Certainly less invasive than going into one's computer files and/or any kind of body searches. So I will uphold the Magistrate Judge's decision in that regard.

As regards Miranda, I am less sanguine than Magistrate Torres about the adequacy of these warnings, and I find it is a

close question. But I have to review all of the circumstances of the questioning, and I have reviewed the video, and it does appear that Mr. Youte understood the communication and that he understood Agent Felipe, and even understood Agent Lopez when he spoke to him in French.

It is apparent from the record that Mr. Youte, while he is not at all proficient in English, does understand some English.

Certainly not enough that Miranda Warnings in English would have advised him of his rights, but enough that in the context of this particular questioning Agent Felipe's warnings, along with Agent Lopez's questions -- and the isolated interspersion of English words -- did not deprive him of the knowledge he needed to make the decision to speak with agents voluntarily. Therefore I will overrule the defendant's objection.

Having said that, I would advise you, Mr. Juman and Mr. Lukenheimer, to have your agent go to Kinkos immediately and copy a thousand Creole advice of rights forms; because I don't understand the reason this situation happened at all.

And I am assuming the defense is going to adduce evidence at trial of their own translation of this conversation which will challenge that of Agent Felipe, and challenge his credibility as an interpreter. That is where I thought the discussion of the term use where Agent Felipe said there was no

Creole version of that -- and the defendant's expert I think was a little surprised -- may play into the jury's decision. Based on the law cited by the Government in the Eleventh Circuit, and my reading of the record, I think defendant's statement appropriately comes in.

I want to point out the cases cited by the defense; there were some distinguishing features. Interestingly, in Perez Lopez one of the problems was that a Spanish language translation, which was being used by the agents there, was flawed and had been identified as such for some time; although agencies and law enforcement continued to use it. We kind of have an opposite situation here.

And I understand the Botello-Rosales decision, but I think, as I said before, the infirmity with the term need is cured by the advice given before that and the advice given after that about the availability of a lawyer.

All right. Is there anything else we need to take up? Before we resume at 1 o'clock.

MR. JUMAN: Just briefly, Judge, with respect to the transcript, I just want to inform Your Honor that we did provide our proposed transcript to use at the trial to the defense.

They made proposed changes, we accepted them, and so I believe we have a jointly agreed upon transcript. If there is an alternative defense transcript I have not seen it.

MR. ARTEAGA GOMEZ: He is correct, Your Honor.
THE COURT: All right.
MR. ARTEAGA GOMEZ: If I could make just one brief comment.
THE COURT: Sure.
MR. ARTEAGA GOMEZ: I wanted to correct one comment made by Mr. Juman. With respect to the argument about use and me raising it now too late, I refer Your Honor to docket entry 38-1 at page 67; that is the transcript I attached to my pleading where I made the same argument to the Magistrate.
THE COURT: And I did not mention it for the reason I felt that that issue had been discussed and preserved. I did not see any waiver problem.
MR. ARTEAGA GOMEZ: Yes, Your Honor.
THE COURT: All right. I will see you back here at one to begin trial.
COURT IN RECESS.
THE COURT: Please be seated everyone are we ready to proceed.
MR. JUMAN: Yes, Your Honor.
MR. ARTEAGA GOMEZ: Yes, Your Honor.
THE COURT: All right.
MR. JUMAN: Your Honor, before we bring in the jury I would like to invoke the Rule.
THE COURT: The rule is invoked. So if there is anyone

here that is going to testify for either party would they please leave the courtroom.
Oh, yes, let me make my public service announcement before we begin trial. Counsel you need to stay by a microphone or have the hand-held microphone.
As you know, these courtrooms are very difficult to hear so you need to make sure you speak directly into the microphone so that Ms. Sanders can make her record.
Also, you are all very rapid speakers so you need to make sure to slow down, again, so that Ms. Sanders can make her record.
All right. Bring in the jury, please.
COURT SECURITY OFFICER: All rise, please.
THE COURT: Everyone may be seated.
Ladies and gentlemen of the jury, as I told you, I am going to give you some preliminary instructions on the law. You have now been sworn in as our jury, so I am going to give you some framework in order for you to start your job as jurors. At the end of the case I will instruct you more fully, but I would like to start with some preliminaries to give you a roadmap, as it were.
By your verdict, you are going to decide the disputed issues of fact in this case. I decide all the questions of law that arise during the trial. And as I told you, before you go back to deliberate I will give you instructions on the law that

you must apply in reaching your decision. Because you will be called upon to decide the facts of the case, you should give careful attention to the testimony and the evidence presented for your consideration during the trial.

But you should keep an open mind and should not form or state any opinion about the case, one way or the other, until you have heard all of the evidence and have had the benefit of the closing arguments of the lawyers and my instructions to you on the law.

Now, during the course of the trial, you must not discuss the case in any manner amongst yourselves or with anyone else, and you must not permit anyone to discuss the case in your presence.

As I told you, as far as the lawyers are concerned, and others you may come to recognize as having some connection with the case, you are instructed that in order to avoid even the appearance of impropriety, you should have no conversation whatsoever with these people while you are serving on the jury; and they will have no communication with you.

You, as jurors, must decide the case based solely on the evidence presented within the four walls of this courtroom.

This means that, during trial, you must not conduct any independent research about the case, the matters in the case, or the individuals involved in the case. In other words, you should not consult dictionaries -- if anyone uses them

anymore -- or any device, including your computer, your laptop, your iPad, your iPhone, to search the Internet, websites, blogs, or any other electronic site or tool to obtain information about this case or help you decide this case.

Please, please, do not try to find out any information from any source other than the witnesses and the evidence in this courtroom.

As I said, until you go back to the jury room to deliberate, you may not discuss the case with anyone, including your fellow jurors.

After you have heard all the evidence and the arguments, you will then go back to deliberate, and only then can you discuss the case with your fellow jurors.

Now, when I say you must not talk to anyone about the case, I mean electronically; by phone, computer, websites, blogs. This includes your family members or friends.

You cannot communicate with anyone about the case via cell phone, e-mail, text, Twitter, blogs, websites, Internet chat room, Facebook, none of it.

You took an oath. The reason for this lies in the fact that it is your duty to decide the case fairly based on the evidence and the testimony presented during the trial without consideration of other matters.

Now, from time to time during trial, I may be called upon to make rulings of law or address the objections made by

the lawyers. You should not think, because of any ruling I make, that I have an opinion one way or the other on the merits or the facts of the case.

If I sustain an objection to a question that goes unanswered by the witness, you should not try to guess what he or she would have said and not draw any conclusions from just the asking of the question itself.

You should not take anything I do or say during the trial to be any indication of what I think the evidence is or what I think the evidence should be.

Now, you saw us come over here during voir dire; we call it sidebar. During trial, it may be necessary for me to talk to the lawyers out of your hearing concerning questions of law or some procedural issue.

On some occasions, I might ask you to step into the jury room so that I can speak to the lawyers; other times I will bring them over here.

I am going to try to limit these interactions as much as possible, but you should remember at all times the importance of the matter you are here to determine and try to be patient even though you think things might be going slowly.

As I told you, we expect the case to last this week. I know the lawyers and I are going make every effort to move things along and expedite things whenever possible.

Again, so you can better understand the nature of the decisions you are going to be asked to make and how to make them, I am going to give you these preliminary instructions.

These will not cover all the rules of law that apply to this case; I will give you full instructions after the lawyers' closing arguments and before you retire to deliberate.

Undoubtedly, I am going to repeat some of the things I am saying now, but in any event, do not single out any one instruction as stating the law, but consider all of the instructions as a whole.

As you were told during jury selection, this is a criminal case and the Government has charged the defendant by an indictment.

The indictment is merely a piece of paper that accuses or states the charges against a defendant, which is to be decided by you. But the indictment is not evidence against the defendant or anyone else.

The defendant has entered a plea of not guilty and is presumed by the law to be innocent. The Government has the burden of proving the defendant guilty beyond a reasonable doubt, and if the Government fails to do so, you must find the defendant not guilty.

Now, because the Government has the burden of proof, it goes first and presents testimony and evidence. After the Government finishes or rests what we call its case-in-chief,

the defendant may call witnesses and present evidence if he wishes to do so.

However, the law does not require a defendant to prove his or her innocence or produce any evidence at all, and no inference may be drawn from the election of a defendant not to testify in the event he should do that.

I have already told you that Ms. Sanders is making a complete record of what is said during the trial in case it becomes necessary at a future date to have a transcript.

But this transcript, if it's ever made, is not going to be ready in time for your deliberations, so you should not expect to receive any transcript.

You are going to have to rely on your own individual and collective memories of what the testimony was.

On the other hand, if there are papers or documents introduced into evidence, that will be available for you to study when you go back to the jury.

On some occasions during the trial, the paper may be displayed to be looked at briefly. Understand, if it is not, you will still get it at the end of the trial when you go back to the jury room.

Now, because there will be no official transcript available, you are being allowed to take notes; all of you have notepads and pens. If you choose to take notes, you will leave them here at night with the clerk in the jury room, and

they will be locked up. You of course do not have to take notes. You may, if you wish, but you don't have to; it's up to you. If you do decide to take notes, be careful to not get so involved in taking notes that you become distracted from the actual witness testimony or the proceedings.

Don't try to take down verbatim all of the testimony. You should limit the notetaking to specific things that might be difficult to remember, or something that catches your attention like times, dates, names, relationships of people to each other, things like that.

Remember, you must decide the credibility of each witness, and therefore, you must observe their demeanor, the way they testify and the way they present themselves, and note taking can distract you from that.

Also remember that the notes are only aids to your memory, and whether you take notes or not, it is your own independent recollection of what the testimony was that is important.

You should not be unduly influenced by your notes or the notes of any other juror. They are not entitled to any greater weight than your memory of what happened and what the testimony was. At the end of this case, all of your notes are destroyed.

Now we are going to begin the trial by affording the lawyers for each side the opportunity to make an opening

statement where they explain to you the issues in the case, and they summarize the facts they think the evidence is going to show.

After the end of all the testimony, the lawyers are again given an opportunity to talk to you in closing argument.

The statements that the lawyers make now, as well as the arguments at the end of the trial, are not to be considered by you as either evidence in the trial or instructions on the law, which come only from me; the evidence comes only from the witnesses and the exhibits.

Nonetheless, these statements are designed to help you understand the facts and the disputes we have here. So I ask that you give the lawyers your close attention as I acknowledge them in turn for purposes of delivering their opening statement.

Counsel for the Government.

MR. JUMAN: Thank you, Your Honor. $37,000 in cash divided into four separate bundles individually wrapped in paper. Those bundles were hidden inside a box of detergent that was on a box on a shelf in the defendant's cabin.

Members of the jury, that is why we are here today. We are here because when Customs officers asked Mr. Youte if he was carrying more than $10,000 in currency he said no; and it was a lie.

It was a lie because the defendant knew he had that

Tide box in his cabin, and that it was filled with cash.

The defendant is charged with committing two crimes. The first is called bulk cash smuggling; that refers to the crime of attempting to transport more than $10,000 outside of the United States without declaring it.

The evidence will prove the defendant guilty of this charge, and the Government will show the defendant tried to take that Tide box full of cash from the United States to Haiti, and when he was asked about it by Customs he did not admit he had it.

The second charge is making a false statement to a Government officer; lying to Customs.

In this case when he was asked, are you carrying more than $10,000 in cash and he said, no, that was a lie.

The evidence will prove he was guilty of that crime because the evidence will show the defendant knew at the time he was asked the question he knew that Tide box was in his cabin filled with cash.

The defendant worked as a crew member on a ship called the Doris T. That ship regularly left from Miami to Haiti and back. And the morning of February 27th, 2017 that ship was waiting to make another trip to Haiti.

And as it was waiting to leave for Haiti, the Doris T was subject to a Customs inspection. And as you know, if you have traveled internationally, Customs inspectors will ask

questions. They ask questions about whether you are carrying things that shouldn't be going out or coming into the country, illegal substances, plants, animals.

And they also ask questions about transporting large amounts of cash into or outside of the United States. Anyone subject to Customs questioning is asked this question, are you carrying more than $10,000.

Sometimes that question occurs on a Customs form you fill out by hand, and sometimes it is just a question that the Customs officer asks you as you are going through Customs. It is a standard question.

And you will learn on February 27 when the Doris T was subject to a Customs inspection all the crew members were asked the same questions -- the same standard question.

But the evidence will show when the defendant was asked that question he did not reveal that on the shelf in his cabin was that detergent box filled with cash.

Now in an attempt to satisfy the Customs officers the defendant did produce some money. He got money out of his pocket, got money out of a pillow case, smaller amounts, that he gave to the Customs officers; hoping that if he gave them the small amount of money they would go away and would not look for that Tide box.

But as you are about to learn after repeatedly asking the defendant if he had any more money, and the defendant

repeatedly said no, the Customs officers searched his cabin and found the Tide box and found it was filled with money.

You will also hear at the moment they found that box, the moment they first tried to open it, the defendant who was standing outside of his cabin at the time started to get very upset.

You will hear that he started to tell everyone in earshot they should talk to Jeff. And you will learn that Jeff was the person who gave him the box; Jeff was the person who told him that the box had money in it; that Jeff was the person who asked him to bring this box to Haiti.

You will also hear that after the money was discovered the defendant was interviewed by law enforcement officers and that he admitted several things.

He admitted he knew the box contained money, and he also admitted that Jeff told him the box contained money.

He admitted that Jeff was also going to Haiti -- while the defendant was going to travel by boat with the box, Jeff was going to fly to Haiti, and the plan was for the defendant to give the box that contained this money back to Jeff once they both arrived back in Haiti.

Now, the Judge told you our burden is heavy and we have to prove the defendant's guilt beyond a reasonable doubt.

So how is the evidence that you are going to see -- how will it prove the defendant's guilt beyond a reasonable

doubt? Well, you are going to meet the Customs officer who was conducting the inspection on the Doris T that day. You will hear from him how the defendant behaved that day.

You will hear what he said in response to questions by the officer. And more importantly, you will hear what he did not say in response to the questions.

You will hear how he reacted when the Customs officer found that detergent box in his cabin. You will see the box itself. You will see how it was wrapped in tape in such a way that told anyone that had that box that it did not contain detergent any more. You will see the paper the cash was wrapped in. You will see photographs of exactly how many bills there were; the four stacks.

You will also see the defendant's passport; and that will show you how many times the defendant has traveled internationally and, therefore, how many times he has gone through Customs. You will see a Customs declaration form for the defendant from one of those trips.

And you are going to hear from a coordinator, someone that works with the ships the defendant works on that helps them go through Customs.

And he will tell you every time one of the ships comes into the United States the crew members, like this defendant, gets asked these Customs questions; including are you carrying more than $10,000 in currency.

You will meet two of the agents that interviewed the defendant after the money was found. And you will get to watch the video of the interview.

And this interview was done in Creole, which is the defendant's native language, but we have an English language transcription so you will be able to read along.

You will be able to see not only what the defendant said, but you will also be able to watch the defendant's body language and demeanor. You will be able to see how he acted when he was asked these questions.

You will see that he acted like someone who was unhappy with the fact that he had been caught, and that he wanted to tell law enforcement as little as possible.

But nevertheless he admitted he knew there was money in the box, and the plan was to give that money back to Jeff when they both arrived in Haiti.

Very soon we will start with the evidence in this case, and as the Judge instructed you it is the evidence that matters, not the words of the prosecutor and not the words of defense counsel.

And as that evidence comes in we ask you to do three things. First, pay very close attention to the evidence.

Second, listen to the Judge's instructions.

And third, and most importantly, use your commonsense; the same commonsense that you apply to your everyday dealings

in life. If you do that, if you apply your commonsense to the evidence that you are about to see and hear, you will find the defendant guilty beyond a reasonable doubt of both bulk cash smuggling and lying to a Government officer.

Thank you.

THE COURT: Thank you, Mr. Juman.

On behalf of Mr. Youte.

MS. LOMAX: Ladies and gentlemen, Mr. Youte did not know that the box, the sealed box, contained over $10,000.

Mr. Youte did not know that there is a law in the United States that requires a person to file a report when leaving the United States with over $10,000.

Mr. Youte did not intentionally lie to officers to avoid filing the report because he did not know it existed; so Mr. Youte is not guilty.

Hubert Youte is a 60 year old man who has never been arrested before. He earns an honest living as a crew member on a ship that docks at the Miami River and goes back and forth from Haiti to Miami carrying cargo.

He lives in Haiti; he has never lived in the United States. He comes over here to work on the docks and then goes back. He has done that for a long time.

Mr. Youte has never gone to school. He does not read and write. Creole is his native language; he cannot speak English. He cannot even write his own name; he is illiterate.

But he found a job earning an honest living, a modest income, working for these cargo ships. He got a job that does not require any specialized training or education; does not require him to speak English.

He got a job as a loader. You will learn that his title was AB, which stands for able-bodied. And so that gives you a sense of the level and hierarchy of where he was on that cruise ship -- I'm sorry cargo ship.

His job was to load heavy items bag of rice, beans, used clothes, bicycles, mattresses, things like that that were traveling to Haiti.

He did not supervise anyone. He was not a captain, a first mate, none of that; his job was to be an able body who was ready, willing and able to load that ship when it was either in Miami or in Haiti.

That's what he did, and he did that hard back breaking work for over 15 years with dedication. He did it despite the time away from his family on the ship for long periods of time.

He did it despite the fact that he essentially lived in a cabin that you will hear is the size of about six by eight feet. That is where he kept his personal belongings and where he lived on the boat.

Before one of these trips he was asked by two friends to do them a simple favor. One person said, here is $2000 in cash, please take it to Haiti, and when you get there -- he was

sending it to a specific church in Haiti as a donation. And he did it; he took it. And he had another friend, somebody named Jeff, who gave him a Tide box -- it was a sealed box taped closed -- and asked if you could hold onto this money for me, and when I get to Haiti I will get it from you.

You will learn that Jeff never told Mr. Youte how much money was in that box.

You will learn that Jeff was Mr. Youte's friend, who was another crew member who also works on these ships and had the same boss as him for many years. So, he is someone he sees every day.

So he says sure, and he takes the box, and he is going to take it to Haiti and give it back to Jeff before he leaves the ship.

And you will hear that he goes through this Customs inspection -- that is leaving the country not coming into the country -- and the inspectors come into his cabin and begin interrogating him.

And you will hear that they are interrogating him in English and that Mr. Youte speaks Haitian Creole. They ask him questions; and they claim to have asked him if he had firearms, ammunition or over $10,000 in U.S. currency.

And they claim that he answered no to that question about the over $10,000 in U.S. currency. And you are going to learn through the evidence that he did not know that that box

contained over $10,000. And so the agents searched his room and found the box, they cut it open -- it was never opened by Mr. Youte, he never looked inside that box -- and they found the money.

And Mr. Youthe told them exactly where that money came from. He said that money was from Jeff, and he told them who Jeff was; that Jeff is a person that works on the ship and he has the same boss.

He told him the kind of car Jeff drives, that he has a white pick-up truck. He told them that Jeff is a welder on the ship. He told them that Jeff never told him how much money was in the box.

He told them that Jeff did not pay him anything to carry the box, it was a favor.

He told them everything that he knew, and they kept interrogating him. He told them everything that he knew and still they arrested him; and now he is sitting here before you facing Federal charges.

He fully cooperated and yet he is here. Now, as you heard, the Government has to prove beyond a reasonable doubt that Mr. Youte knowingly and intentionally tried to hide over $10,000 to avoid filling out the required report.

But they cannot prove that because there will be no evidence that he knew that box actually contained over $10,000. He knew it had money in it, but he did not know it was over

$10,000. And they will not be able to prove that he was aware that there was any filing of a report requirement when leaving the United States since he did not know how much money was in the box and he did not know there was a law regarding money leaving the United States; so he was not trying to evade it.

And so that same thought process would also apply to the charge where he is accused of making a false statement. And let's start with the fact that exchange was in English and that is not his language.

And on top of that he is in a room with several agents who were interrogating him, he is scared; he does not fully understand what is happening.

So, that is the first part of it. And even if we get past that, he doesn't know how much is in that box so he could not have lied when he said he did not have more than $10,000 in his possession.

Mr. Youte did not know so he was not trying to avoid filing a report when he was leaving the United States.

Ladies and gentlemen, after this case is concluded and you have heard all of the evidence and the Court's instructions I am confident you are going to know that Mr. Youte is not guilty of the crimes with which he is charged.

Thank you.

THE COURT: All right. Government call your first witness.

MR. JUMAN: Government calls Angel Rodriguez.

WITNESS SWORN

Q. Officer, if you would tell us your name, please.

A. My name is Angel Rodriguez.

THE COURT: If you could pull the microphone in a little closer; you are very soft spoken.

You may continue.

Q. Officer Rodriguez, tell the jury where you work.

A. I work for U.S. Customs and Border Protection at the Miami Seaport.

Q. Tell the members of the jury what is U.S. Customs and Border Protection -- what do they do?

A. We usually deal with in-bound and outbound cargo; we inspect in-bound and outbound cargo.

Q. How long have you been doing that?

A. Almost 12 years.

Q. What are your specific responsibilities when you are doing an inspection?

A. I am in a specialized unit which is the Anti-Terrorism Contraband Reporting Team. Our number one mission is to look for terrorism and narcotics.

Q. Can you explain what you do generally and what you look for when you are doing a Customs inspection?

A. We look for money, weapons, terrorism, stowaway's.

Q. You mentioned looking for money; is it illegal to transport

money or currency out of the United States?
A. No.
Q. What is it you are looking for?
A. There is a form you have to fill out if you are carrying more than $10,000.
Q. And what is the difference from your perspective between inbound and outbound Customs inspections?
A. In inbound and cargo, we are looking for terrorism and narcotics, and on the outbound inspection we look for money, weapons and stowaway's.
Q. What was the last word you said?
A. Stowaway's.
Q. And during your 12 years of experience with Customs, approximately how many inbound inspections have you done?
A. I would say over a thousand.
Q. How many outbound inspections?
A. Between fifty to a hundred.
Q. How many of those fifty to a hundred outbound inspections took place on a ship or on a sea-going vessel of some kind?
A. 30 to 40.
Q. Can you tell us what your assignment was on February 27?
A. Myself and another group of officers were called out to assist HSI, which is Homeland Security Investigations, and Hallandale Police Department, to do an inspection on a vessel called the Doris T.

Q. Can you describe the Doris T for the jury?
A. The Doris T is a Haitian freighter that takes outbound cargo to Haiti. It is about 130 to 150 feet in length and has between 8 and 10 crew members.
Q. What was the condition of the ship on February 27?
A. It was loaded with mattresses, bicycles, and different products.
Q. Where was the ship located that day?
A. 3630 North River Drive, which is like a warehouse where they keep cargo to be loaded for the boats leaving to Haiti.
Q. What other agencies were involved in the inspection that day?
A. HSI, which is Homeland Security Investigations and the Hallandale Police Department.
Q. Can you describe, generally speaking, the procedure for dealing with the crew of a ship when you are doing Customs inspections of a ship?
A. We talk to the captain, get a crew list to see how many crew members are onboard the vessel, then we assign one of our officers to keep an eye on them in like a specific area.
Q. This particular inspection of the Doris T, where was the crew gathered?
A. Back of the boat.
Q. Were you in the back of the boat that day?
A. Yes, I was.

Q. Did you see the defendant there?
A. Yes.
Q. Had you seen the defendant before that day?
A. Yes.
Q. When had you seen the defendant before February 27th?
A. I saw him on other vessels.
Q. What was the reason you saw him on those other vessels?
A. He was a crew member.
Q. What were you doing on the ship?
A. Doing an inbound inspection.
Q. Is that a Customs inspection?
A. Customs inspections, yes.
Q. About how many times have you inspected a ship on which the defendant was a crew member?
A. Around three or four.
Q. And during those prior inspections did you speak with the defendant?
A. Yes, I did.
Q. What language were you speaking?
A. English.
Q. About how much time did you spend with the defendant?
A. About four to five minutes.
Q. During those four or five minutes what did you say to the defendant and what did he say to you?
A. Asked normal questions like how long were you in Haiti, did

you leave the boat at any time, do you know if there is any contraband on the boat; normal questions.
Q. Did the defendant answer those questions?
A. Yes.
Q. What language did he answer in?
A. English.
Q. Did the defendant ever show any difficulty in answering those questions on prior occasions?
A. No.
Q. Did the defendant have anything to declare on those prior occasions?
A. No.
Q. Okay. Let's go back to February 27th. Can you describe for the jury how the defendant was behaving when you saw him on February 27 on the Doris T?
A. When we got to the boat myself and the case agent spoke to him and we noted his demeanor was different that time; his body language was different. His face was kind of upset that we were there --
MS. LOMAX: Objection, Your Honor, as to speculation.
THE COURT: If you could tell us what you mean by different -- different from the other times you had seen him, different from the first time; if you could be a little more specific.
THE WITNESS: The previous times I encountered him he

was more -- he was friendly, and this time his demeanor was different.
Q. Can you describe physically what was different this time than the previous times?
A. By his body language and face; he was upset we were there.
Q. On this occasion on February 27th did you have occasion to question the defendant?
A. Yes.
Q. Where did that questioning take place?
A. His room.
Q. On the ship?
A. Yes.
Q. How did you know it was his room?
A. Because he escorted us to his room.
Q. Now, where were you standing when you were talking to the defendant?
A. Inside the room with my other partner; all three of us were inside the room.
Q. How large was the room?
A. Eight by ten, not too big.
Q. Who else was present beside you and the defendant?
A. My other partner, Officer Carra.
Q. What is Officer Carra's position?
A. He is a Border Patrol Officer
Q. What language did you use?

A. English.
Q. During your questioning of the defendant did he indicate he was having difficulty understanding you?
A. No.
Q. Did he indicate in any way that he was confused by the questions?
A. No.
Q. Let's talk about the specific questions you asked the defendant. What was the first thing you asked when you got to his cabin?
A. The first thing we asked is this your room? He replied, yes.
And the second question, does everything in the room belong to you?
Q. Let me stop you there. When you asked if everything in the room was his where was he standing?
A. Inside the room.
Q. Did he look anywhere?
A. No
Q. What did you do after you asked the defendant if everything in the room was his?
A. We asked if he was carrying in excess of $10,000.
Q. What did the defendant say in response?
A. He said, no, and at the time I asked how much money do you have? That is when he proceeded to take out $2,000 from a

pillow case.
Q. Where was the pillow case located?
A. On top of the mattress.
Q. What did you do after the defendant took out the $2,000 from the pillow case?
A. Counted it and laid it on top of the mattress.
Q. Where was the mattress in the room?
A. On his bunk bed.
Q. He had a bunk bed?
A. Like a small bed.
Q. Okay. What happened after you counted out the $2,000 on top of the mattress?
A. I asked does he have more money, and he reached into his pockets and he pulled out $42.
Q. What did you do with the $42?
A. I counted it and put it on top of the other money.
Q. What happened after you took the $42 from the defendant?
A. My partner asked was there more money, and that is when he proceeded to reach into a pair of jeans he had laying on a top of a chair and pulled out $200.
Q. How do you know it was $200?
A. Because I counted it.
Q. What did you do with the $200 after you counted it?
A. Put it on top of the other money.
Q. What happened after the $200 was placed on top of the bed?

A. We asked several more times if this is everything.
Q. Please tell the jury what did you do after the defendant gave you the $200 and you put it on the bed?
A. We asked him several times did he have more money and he said no.
Q. How many times did you ask if he had more money?
A. Two or three times.
Q. Why did you ask so many times if he had any more money?
A. I thought he was trying to throw us off by having money in different places.
Q. What would you have done if the defendant had said, yes, I have more than $10,000 in currency?
MS. LOMAX: Objection, Your Honor.
THE COURT: Sustained.
Q. What did you do after the defendant said no?
A. We instructed him to step outside the room by the front door.
Q. What did you do after the defendant stepped out?
A. My partner and I started to search. We started -- I started with the bed and he searched the little bench area.
Q. Let me ask you before you go into the details of the search where was the defendant standing when you were searching the room?
A. He was standing by the front door -- we like to keep them by the front door to make sure they don't come back and claim

there is stuff missing from the cabin.
Q. Was the cabin door opened or closed during this process?
A. It was open.
Q. Which way was the defendant facing?
A. Towards the room.
Q. Now, if you would describe for us how you and your partner searched the cabin.
A. I started with the bed while my partner was searching the bench. We went low; after we went down low we went up higher, and that's when I noticed on the wall there was a little shelf.
Behind a curtain -- like a rope hanging from the ceiling and like a little curtain hanging behind like a wooden shelf on the wall.
Q. Let me stop you there, could you describe what you mean by a curtain and a rope hanging -- how was the rope attached to the wall?
A. Hanging from the ceiling like a clothes line.
Q. Each end was attached at some point?
A. Correct.
Q. What was on top of the rope?
A. A little rag, a little towel.
Q. What did you do when you saw the shelf and the -- behind the towel?
A. I noticed there was a box -- my partner was close to it -- I said, hey, check the box.

Q. What did your partner do after you told him to check the box?
A. He grabbed the box -- he had like a little table inside the room; he put it on top there. We saw that it was wrapped with a lot of tape.
Q. What color was the tape?
A. Clear tape.
Q. How much of the box was covered with tape?
A. The whole top part of the box.
Q. Was that tape part of the original packaging?
A. No.
Q. Showing you what has been marked for identification as Government's Exhibit 2. You see that?
A. Yes.
Q. What is it?
A. The Tide box.
Q. When you first saw the Tide box on the shelf what was the condition?
A. Sealed up with a lot of tape.
Q. How does it differ from the condition it is in now?
A. We had to cut it open to see what was inside.
Q. Apart from that change is it in the same condition as the day you saw it on the ship?
A. It's not the same condition. Like I said, we had to cut it open.

MR. JUMAN: The Government offers Exhibit 2.
THE COURT: Any objection?
MS. LOMAX: No, Your Honor.
THE COURT: Exhibit 2 is admitted.
Q. And where was the defendant standing when you found the Tide box?
A. By the front door.
Q. What did you and your partner do when you found the Tide box?
A. My partner handled the box, and he cut it open.
Q. Where was the defendant in relation to your partner and the box when you partner opened up the box?
A. My partner's back was towards the defendant.
Q. From where the defendant was standing could he see the inside of the box?
A. No.
Q. How did your partner open the box?
A. (Unintelligible comments) and then he cut it open.
THE COURT: Officer, really, you need to slow down and speak into the microphone so my court reporter can make a record.
Q. How much of the box did you open at that time?
A. The whole top part.
Q. What did you see inside the box when you opened it?
A. Saw like envelopes with tape and newspaper.
Q. What did the defendant do when Officer Carra opened up --

withdraw that -- what did you do after you saw inside the box the paper?
A. My partner (unintelligible comments) made a little cut with a knife, made a hole there.
Q. Whose knife was it?
A. My partner's.
Q. How much of a hole did he make?
A. Just a little hole.
Q. Okay.
A. And that's when he -- we noticed there was money inside.
Q. What did the defendant do after Officer Carra opened up one of those bundles?
A. At that time he started saying, talk to Jeff, talk to Jeff.
Q. Who was the defendant speaking to?
A. Us.
Q. What language was he speaking in?
A. English.
Q. At that point were the contents of the box visible to the defendant?
A. No.
Q. After the defendant started saying talk to Jeff what did you do?
A. The case agent was outside the room -- me and the case agent escorted him off the boat.
Q. When you say case agent do you know his name?

A. Special Agent Quinquilla.
Q. Is that Special Agent Quinquilla sitting here at counsel table?
A. Yes.
Q. And I neglected to ask you this before; do you recognize the defendant in the courtroom today?
A. Yes, I recognize him.
Q. Can you describe what he is wearing for the record.
A. Wearing a long shirt, kind of beige.
MR. JUMAN: Let the record reflect the witness has identified the defendant.
THE COURT: All right.
Q. Now, after the currency was found what happened with the defendant?
A. Myself and Special Agent Quinquilla escorted him out of the room.
Q. Where did you take him?
A. To a secure area by the warehouse.
Q. On the ship or off the ship?
A. Off the ship.
Q. While you were walking the defendant off the ship what did he do?
A. The defendant started talking in Creole to the other yard workers, and all I could understand was Jeff, Jeff.
Q. So, in other words he was speaking a language you did not

understand but you heard him using the word Jeff as well?
A. Yes.
Q. Did he say anything else when you escorted him off the ship?
A. He just kept saying Jeff, Jeff; and they all were pointing in different directions
Q. Where did you go after you escorted the defendant off the ship?
A. I went back to the vessel.
Q. Did there come a time later that day you actually opened up the Tide box and the containers within?
A. No; I took it back to the HSI facilities and I was not a part of that.
Q. Did you later see the contents of the Tide box?
A. Yes. I went to the bank; I was present when they were counting the money.
Q. Showing you what has been marked for identification as Government's Exhibit 1 A through D.
Do you recognize them?
A. Yes.
Q. Can you tell us what is shown in Exhibit 1 A?
A. The packaging inside the Tide box.
Q. Exhibit 1 B, what do we see here?
A. Envelopes, different types of envelopes.
Q. What do we see in Exhibit 1 C?

A. The packages inside the Tide box.
Q. What do we see in Exhibit 1 D?
A. The money.
Q. Where was the money found?
A. In the Tide box.
MR. JUMAN: The Government would offer Exhibits 1 A through D.
THE COURT: Any objection?
MS. LOMAX: No, Your Honor.
THE COURT: Government's Exhibit 1 A through D are admitted.
Q. Can you see it?
A. Yes.
Q. The white plastic bag is that a part of the original box?
A. No.
Q. Where did that come from?
A. I have no idea.
Q. Originally was the Tide box in any kind of container?
A. No.
Q. Exhibit 1 B. Do you see a shiny substance across the top where the blue lines are?
A. Yes.
Q. What was that substance?
A. Some kind of tape.
Q. Where was that tape with respect to the Tide box?

A. Around the whole box.
Q. Would it have been possible for him to get to the contents of that box without cutting through the tape?
A. No.
Q. Showing you what is in evidence as Government's Exhibit 1 C. What are we seeing in this picture?
A. The bundles.
Q. Where were the bundles found?
A. Inside the Tide box.
Q. What do those bundles consist of?
A. Newspaper and clear tape.
Q. Exhibit 1 D, what are these --
A. Money inside the Tide box.
Q. And you said that you were present when the money was counted?
A. Yes.
Q. How much money was found in that Tide box?
A. Yes.
Q. Do you remember how much money was found inside the Tide box?
A. Around 36,000 (unintelligible).
Q. Do you remember how many bills there were?
A. There were 1,323.
Q. What denominations?
A. Different denominations.

Q. What was the most prominent denomination?
A. $20 bills.
Q. Now you said you have been with Customs for about 12 years. What is your general practice when someone reports that they are carrying more than $10,000?
A. There is a form they have to fill out called a FinCEN.
Q. What do you do with the form once it is filled out?
A. We give to it to the Treasury Department.
Q. How do you get it to them?
A. We have a warehouse where we can mail everything out to them.
Q. I'm showing you what is marked as Exhibit 11.
Do you recognize that?
A. Yes.
Q. What is Exhibit 11?
A. The packages inside the Tide box.
MR. JUMAN: The Government offers Exhibit 11.
THE COURT: Any objection?
MS. LOMAX: No objection.
MR. JUMAN: Permission to publish Exhibits 2 and 11 to the jury?
THE COURT: Yes.
Any additional questions, Mr. Juman?
MR. JUMAN: No, Your Honor.
THE COURT: As I said before, ladies and gentlemen,

all of the evidence and documents will be available to you for your deliberations. Cross-examination.
BY MS. LOMAX:
Q. Good afternoon, Officer Rodriguez.
A. Good afternoon, ma'am.
Q. When you questioned Mr. Youte, you were inside his cabin, correct?
A. Correct.
Q. You were there with four other people?
A. One other partner.
Q. The one partner?
A. Yes.
Q. Who was that?
A. Officer Carra.
Q. You were in there?
A. Yes.
Q. And Mr. Youte was in there, correct?
A. Correct.
Q. There were three people in the cabin?
A. Yes.
Q. You testified on direct that the cabin was eight by ten; is that correct?
A. Around there.
Q. You testified in a prior hearing, right?
A. Yes.

Q. In that hearing, you were in a courtroom with a Judge?
A. Yes.
Q. And we were there; Mr. Arteaga-Gomez, Mr. Youte, and I were there, correct?
A. Correct.
Q. And the prosecutor, Mr. Juman, was there?
A. Correct.
Q. You were sworn to tell the truth?
A. Yes.
Q. During that hearing, you testified that the cabin was eight by six?
A. Eight by six, eight by ten. I don't remember.
Q. Would looking at the transcript from that proceeding refresh your recollection?
A. Yes.
MS. LOMAX: For the record, I'm referring to page 13, lines 21 and 22.
May I approach, Your Honor?
THE COURT: You may.
BY MS. LOMAX:
Q. Does that refresh your recollection as to the size of Mr. Youte's cabin?
A. Yes.
Q. So what was the size of the cabin?
A. Eight by six, eight by ten.

Q. Eight by six or eight by ten?
A. There's not that much of a difference.
Q. My question to you is, was it eight by six or eight by ten?
A. Eight by ten.
Q. You do outbound inspections?
A. Yes.
Q. You testified you have participated in over a thousand outbound inspections?
A. Inbound inspections.
Q. The number of outbound inspections you have done is significantly less than the number of inbound inspections?
A. Correct.
Q. You have done approximately 20 outbound sea inspections, correct?
A. Between 30 and 50.
Q. You testified in a prior hearing, correct?
A. Yes.
Q. The same one we talked about a couple seconds ago?
A. Yes.
Q. In that hearing, you were asked about your inbound inspections, correct?
A. Correct.
Q. And you were asked about outbound inspections?
A. Correct.
Q. Isn't it true that you testified that you have done 20

outbound sea inspections?
A. I have done a lot. Outbound between 30 and 50 inspections.
Q. You have worked on the docks for approximately 12 years, correct?
A. Almost 12 years.
Q. You would agree that the Miami dock is an international hub, if you will?
A. Yes.
Q. So the ships that go to and from Haiti, there are a lot of Creole speakers on those ships, correct?
A. Correct.
Q. A lot of Creole crew members?
A. Correct.
Q. And it's not uncommon on the docks to hear people speaking Creole?
A. Correct.
Q. And you actually rely on Creole-speaking agents to do investigations?
A. Correct.
Q. You speak English, correct?
A. Correct.
Q. You do not speak Creole?
A. I do not.
Q. When you questioned Mr. Youte on the boat, you were speaking to him in English?

A. Correct.
Q. And you were aware that Mr. Youte speaks Creole?
A. No, not when I asked the questions. He was understanding my questions.
Q. You are aware that your fellow agents decided to speak with Mr. Youte later that day, correct?
A. I guess when they went back to the office. I have no recollection of what happened afterwards.
Q. So you're not aware that a Creole-speaking interpreter or agent was brought in to speak to Mr. Youte?
A. Yes, but I don't know what happened back at the office.
THE COURT REPORTER: Please slow down.
THE COURT: Yes, Mr. Rodriguez.
BY MS. LOMAX:
Q. Are you aware that a Creole-speaking agent was called in to speak with Mr. Youte?
A. Yes.
Q. Now, you testified that you have had prior inspections --
(UNINTELLIGIBLE COMMENTS BY COUNSEL AND WITNESS SPEAKING OVER EACH OTHER)
Q. Those were in inbound inspections?
A. Inbound inspections.
Q. Over the past 12 years?
A. Yes.
Q. And one of those interactions was approximately six years

ago?
A. Around six years, yeah.
Q. And you have no reports from any of those prior interactions?
A. No, not really.
Q. Yes or no, do you have those reports --
A. No.
Q. During any of those prior inspections, you have never found Mr. Youte in possession of any contraband?
A. No, ma'am.
Q. When you were in Mr. Youte's cabin, who asked him about money first?
A. I believe it was me.
Q. And you asked Mr. Youte if he was carrying any monetary instrument in excess of $10,000; is that correct?
A. Correct.
Q. Now, you are aware that monetary instrument includes United States currency?
A. Yes.
Q. And it includes foreign currency?
A. Yes.
Q. It includes traveler's checks?
A. Yes.
Q. It includes money orders?
A. Yes.

Q. It includes personal checks?
A. Yes.
Q. It includes investment securities?
A. I don't know about that.
Q. When you were searching his cabin, you found a small Tide box, correct?
A. I saw it. My partner was the one that grabbed it.
Q. And that's Agent Carra?
A. Yes.
Q. What were the measurements of the box when it was sealed?
A. Three by four, I guess. I don't know the sizes of the box.
Q. It was sealed with tape, correct?
A. Clear tape.
Q. The entire box was sealed?
A. Just the top part.
Q. It was not, in any way, open when you got it?
A. Correct.
Q. When you were searching his room, Mr. Youte was standing right outside of his room, correct?
A. Correct.
Q. He was facing inside the room?
A. Correct.
Q. So he saw you searching his room?
A. Correct.
Q. When you pulled out the box or your partner pulled out the

box, it was after that that he said Jeff?
A. After the box was cut open.
Q. After the box was cut open, he said Jeff, correct?
A. Correct.
Q. After you took or escorted Mr. Youte out of his room, you got off of the ship, correct?
A. Correct.
Q. There were other crew members around outside?
A. Around the back of the boat.
Q. And Mr. Youte spoke to those crew members as he was walking by?
A. Not the crew members from the boat. Crew members that worked outside in the yard.
Q. I'm sorry?
A. Crew members that worked outside in the yard.
Q. So, as you were walking out, Mr. Youte was speaking to the crew members who were outside in the yard?
A. Yes.
Q. And he was speaking to them in Haitian Creole?
A. Correct.
Q. And he was saying to them -- you now know -- "Where is Jeff? Somebody find Jeff"?
A. All could I understand was "Jeff, Jeff". I don't know what he was saying.
Q. Those people were pointing in different directions, to you

don't know where, but they were pointing?
A. Correct.
MS. LOMAX: One second, please, Your Honor.
THE COURT: Yes.
BY MS. LOMAX:
Q. When you arrived at the ship, there were other crew members around, correct?
A. Correct.
Q. There was also a white pick-up around?
A. I don't recall seeing the white pick-up.
Q. Do you remember a person named Jeff at the dock?
A. I don't know. I don't know who Jeff is.
Q. Did you speak to anyone named Jeff?
A. No.
MS. LOMAX: No further questions.
THE COURT: Any redirect?
MR. JUMAN: Briefly, Your Honor.
BY MR. JUMAN:
Q. Officer Rodriguez, you were asked a number of questions about the size of the cabin on?
On February 27th, 2017, did you measure the cabin?
A. No, sir.
Q. Were you just approximating?
A. Correct.
Q. To be precise, what is it the defendant said after Office

Carra, your partner, opened up one of the packages inside the Tide box?
A. He said, "Talk to Jeff."
Q. He didn't just say the word Jeff, correct?
A. He said, "Talk to Jeff."
Q. He used the English word "talk"?
A. Yes.
Q. When you were previously interacting with the defendant and you asked him questions, what language were you speaking?
A. English.
Q. What language did he use to respond to you?
A. English.
Q. You were asked some questions about whether during any prior interactions you ever found anything from the defendant; is that right?
A. Yes.
Q. On those prior occasions, what was the defendant's demeanor?
MS. LOMAX: Objection, asked and answered.
THE COURT: Overruled.
BY MR. JUMAN:
Q. You can answer.
A. He was a little more friendly.
Q. How did he convey that friendliness? What did he do?
A. I asked him questions -- answering all the questions and

complying with what we told him to do.
Q. How was that different from February 27th when -- the day you found the Tide box?
A. That day, his face looked like he was really upset. It was not the same as before.
MR. JUMAN: No further questions.
THE COURT: Thank you, Officer. You may step down.
WITNESS EXCUSED
THE COURT: All right, ladies and gentlemen, we're going to take an afternoon break of about ten minutes or so. Stretch your legs, have some coffee, have a soda.
Do not talk about the case. You have heard from one witness. You are not to discuss it. Talk about the weather, talk about the traffic, talk about anything else, but don't talk about the case. We'll have you back in here in about ten minutes or so.
RECESS TAKEN
THE COURT: Bring in the jury, please.
COURT SECURITY OFFICER: All rise, please.
THE COURT: Everyone may be seated.
Ladies and gentlemen, you will notice when you come in that all of us will remain standing until you are all seated. We stand now as an indication of our respect for your new role as judges of the facts.
All right, Government, call your next witness.